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ABSTRACT

The six papers which comprise this document are the result of a year-long "New Birth of Freedom" program in Seattle. The sponsoring organization was a broadly-based group called the People Power Coalition, comprised of civic organizations, churches, research institutes, and media outlets. The program examined the Declaration of Independence in light of contemporary challenges. "Freedom of Speech and Religion" presents results of a questionnaire to determine the value persons place on the first amendment rights. "Freedom of Equality" examines problems stemming from the pursuit of equal opportunity, particularly reverse discrimination. "Freedom and Learning" discusses problems facing public education: subject matter, community responsibility, student and teacher rights, and finances. "Freedom at the Grassroots" reviews recent political activity in Seattle. Questions concerning community role, extending grassroots democracy, restructuring government, and developing new resources are discussed. "Freedom and Technology" is a case study of citizen participation in Seattle futures study that resulted in a policy of reliance on conservation and expansion of hydroelectric facilities rather than continued nuclear plant construction. "Freedom From Want" proposes a model to aid in evaluating policy implication of social welfare programs. Results of citizen questionnaires and excerpts from Supreme Court decisions, constitutions, and statutes are included in the appendix. (KC)

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The People Power Papers:

A New Birth of Freedom

Edited by
Bonnie Bayes and
Patricia Lines

in cooperation with
the People Power Coalition
909 Fourth Street
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U.S. DEPARTMENT OF HEALTH,
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INTRODUCTION TO PEOPLE POWER

In anticipation of the nation's Bicentennial a group of people in Seattle, bothered by the shallow patriotism and commercialism of the official celebration, began planning for a more fitting event. They placed at the center of their work the Declaration of Independence, and sought to understand better the great principles of that document in the light of challenges we face today. The result was a year-long "A New Birth of Freedom" program.

The sponsoring organization was a broadly-based group called the People Power Coalition, comprised of civic organizations, churches, research institutes, and media outlets. This coalition alerts citizens to important policy issues affecting their lives, and encourages all people to participate effectively in the decision-making process. The coalition does not take sides on policy issues, but it is deeply committed to the belief that all citizens deserve to be heard and represented.

The most distinctive feature of the People Power Coalition is the instruments it uses. Along with traditional, participatory devices — meetings, discussions, forums, pamphlets and the like — it seeks to harness the power of modern mass-communications in the service of citizen participation, particularly newspapers and broadcasting media. Along with groups like the YMCA, Urban League, Church Council, and Municipal League, were participating organizations like the Seattle Sun, KZAM Radio, KING Television and The Seattle Post-Intelligencer. During the year many hundreds of column inches of newspaper space and scores of hours of broadcasting time were devoted to the "New Birth of Freedom" agenda.

People Power chose ten, consecutive "freedom topics," — Freedom From Want, Freedom and Learning, Freedom of Speech and Religion, Freedom and Equality, Freedom and the Marketplace, Freedom and the International Community, Freedom and the Environment, Freedom and Technology, Freedom From Fear, and Freedom at the Grassroots. At the outset scholars were commissioned to write papers for each topic, addressing contemporary challenges in the light of our historic ideals. Each paper served as the beginning point for discussions, study guides, articles, broadcasts, and questionnaires. At year's end other scholars were asked to review the entire process for each topic, including the seminal paper, broadcast scripts, articles and tabulated questionnaires, then write a concluding paper — a sort of "human impact statement" for each topic. Resources for all this were provided by the member organizations, supplemented by a grant from the Washington Commission for the Humanities. These papers then served as the basis for planning and implementing ongoing People Power programs.

This book is a collection of some of those concluding papers.

Emory Bundy
Member, Executive Comm.
People Power Coalition
Seattle, Washington

FOREWORD

What is the future of democracy in America? What challenges does it face, and what challenges do we, as its citizens, face? What dreams are yet to be achieved?

These questions were the theme of the year-long People Power Coalition program entitled, "A New Birth of Freedom." The title comes from Abraham Lincoln's famous Gettysburg address. Our country was "conceived in liberty and dedicated to the proposition that all men are created equal." It had been almost ninety years since the Declaration of Independence and the country had failed to live up to its promise. Lincoln called on the people to complete the unfinished work, asking and hoping, "that this nation, under God, shall have a new birth of freedom."

What unfinished work do we have to do now, over one hundred years since Gettysburg and two hundred since the Declaration of Independence?

The six papers collected here help in the endeavor to identify that unfinished work. The freedom of speech and of religion and the freedom of equality, although guaranteed in the Constitution, require constant vigilance. The freedom to learn, which is given a high priority in the Washington State constitution, is threatened by a funding crisis here in Seattle as it is elsewhere in the state and in the nation. Freedom at the grass-roots, freedom and technology and freedom from want all reflect goals that we cherish as part of the American tradition, even though they have no constitutional status. How freedom in all of these areas is to be developed in the future is always uncertain. We hope they thrive but we believe that it is necessary to constantly renew our commitment to the basic principle of a democracy -- to constantly seek "a new birth of freedom."

The following papers were selected from the ten People Power papers that were prepared as the concluding phase of the "A New Birth of Freedom" program. They were designed to document and synthesize the year's activities and to discuss how matters are now, what work is being done to preserve these freedoms and what work needs to be done.

Freedom of Speech and of Religion by Max Savelle, professor emeritus of history at the University of Washington in Seattle and long-time advocate for First Amendment rights, is an assessment of the state of our first amendment freedoms.

Freedom and Equality by Bonnie Leary, a philosophy professor at Edmonds Community College, Edmonds, Washington, is an examination of the problems stemming from the pursuit of equality of opportunity and of result in this country, especially that of reverse discrimination. Bonnie Leary also serves as a board member of PS-85, a group of Seattle business people who are studying how the private sector can solve unemployment problems.

Freedom and Learning by Leonard Kenowitz and Matthew Kangas is a discussion of the problems facing public education in this country with a focused look on Seattle. Leonard Kenowitz is project manager of the Severely Handicapped Personnel Preparation Program at the Experimental Education Unit of the Child Development and Retardation Center at the University of Washington. Matthew Kangas is a lecturer in the English Department at the Seattle campus of the University of Puget Sound and special projects writer for the American Association for the Education of the Severely/Profoundly Handicapped.

Freedom at the Grassroots by Patricia M. Lines, associate professor in the Graduate School of Public Affairs at the University of Washington and formerly a legal services and U.S. Justice department lawyer, is a review of grassroots political activity in Seattle in the last few years.

Freedom and Technology by Edward Sheets, research associate at the Institute for Environmental Studies and staff member of the Energy Information Project, is a case study of citizen participation in Seattle City Light's Energy 1990 study that resulted in an energy policy with reliance on conservation and expansion on hydroelectric facilities rather than continued nuclear plant construction.

Freedom From Want by Joseph Bell, director of the Seattle Income Maintenance Experiment, proposes a model to aid in evaluating the policy implications of social welfare programs.

There is also an annotated appendix with materials illustrating the relative status of each of these freedoms in our legal system. The appendix — excerpts from Supreme Court decisions, constitutions and statutes — provides a contrast in approach. The jurist's analysis is oftentimes quite different from the analysis of the humanist as reflected in the six papers presented here.

As you can see, the papers range from case studies to theoretical models and it is our belief as editors that citizen involvement on all of these levels is vital to the continuation of the principles of democracy that make people free.

Funding for the discussions between scholars and citizens was provided by the Washington Commission for the Humanities and by donations of services and money from coalition members and other participating groups. The views expressed in the following papers do not necessarily reflect the opinions of the Washington Commission for the Humanities or any of the other organizations or groups which contributed time or money and made this book possible.

We are grateful to Arlis Stewart of People Power for her suggestions in preparing this selection.

Bonnie Bayes
Patricia Lines
Seattle, Washington

A NOTE FROM THE AUTHORS

These are the People Power Papers, named after a Seattle coalition that first solicited them.

People Power gave each of us the task of reviewing particular files, containing minutes of meetings, collected news clippings, and even TV transcripts, and asked each of us to write a summary inspired by a year's dialogue which took place at the initiative of citizen discussion groups, or task forces, organized by People Power.

After these papers were written, each author took his or her draft to the appropriate discussion group and received more comments from citizens. Drafts were then edited again.

Thus, to a large extent, there are a multitude of co-authors, unnamed but yet quite important, who contributed to these papers — the people of Seattle.

This exchange was sponsored in part by a grant from the Washington Commission for the Humanities, which had as its goal the meeting of citizen and scholar to discuss matters of public interest. Clearly, the Commission succeeded at this, and these papers are the proof.

We thank those citizens who met with us and hope we have kept the papers within the spirit of their discussions. We thank the commission for bringing us together.

We are extremely grateful to People Power, for introducing those of us who are primarily scholars to the many concerned and enlightened citizens who voluntarily came forward to participate in the discussions.

The authors

People Power is a coalition of the following organizations and agencies:

- American Civil Liberties Union
- Anti Defamation League
- Cablevision, Channel 3, Lynnwood
- Central Area Motivation Program
- Central Seattle Federation of Community Councils
- Church Council of Greater Seattle
- City of Seattle
- Common Cause
- Community Information Project
- Forum Foundation
- Hunger Action Center
- Hunger Response
- King County Policy Development Commission
- KING-TV, KING-FM
- KZAM-AM & FM Radio
- Metrocenter YMCA
- Neighborhood House
- Seattle Municipal League
- Seattle Parents, Teachers, Students Association
- Seattle Post-Intelligencer
- Seattle Public Libraries
- Seattle Public Schools
- Seattle Sun
- Seattle University
- Service Employees International Union, Local 6
- Small Tribes of Western Washington
- United Way Volunteer Bureau
- University of Washington ASUW
- University of Washington Communications Dept.
- University of Washington Institute for Environmental Studies
- Urban League
- WashPirg, University of Washington
- World Future Society
- World Without War Council

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Reflections on a New Birth of Freedom: Freedom of Speech and of Religion

Max Savelle
Professor Emeritus of History
University of Washington

The celebration of the bicentennial birthday of the United States as a nation was a mixed conglomeration of elements; some of them deplorably cheap, tawdry, commercialized; some of them respectable reminders and reinforcers of the values and the ideals that we like to believe have guided this nation in its growth. Still others were more positive and creative, calculated to do something similar to what the founding fathers did; that is, to bring about a new birth of freedom to meet the needs and to inspire the citizens of this society in the new age now beginning.

As we all recognize, the society of this American nation today is almost incredibly different from the societies of the thirteen original states of 1776. The explosive expansion of the population, the geometrically multiplied territorial expansion of the area of the country, the triumphs of science and technology, the industrial revolution, urbanization, and expansion among the media of communication—all have contributed to the creation of a national lifestyle that would have left the founding fathers breathless with awe and disbelief. Obviously the creation of this vast and complex leviathan has brought with it a whole series of new problems of which the founding fathers never dreamed.

A new revolution is abroad in the United States and in the world. It is a revolution that seeks to orient society to the new problems and to find viable solutions to them. What shall be done to alleviate the suffering of a mass population that has already outrun the capacity of the economy to provide employment for its members? What shall be done to make sure that no man or woman who needs employment may look for work in vain, that they may enjoy—as is their right—a complete and secure freedom from want and fear? What shall be done to preserve or enlarge the freedom of the people to live their lives in environments that are unpolluted and in which they may find in the forests, in the mountains, in the rivers and lakes of their land, and in the oceans that wash its shores, that elemental contact with nature and with nature's God without which humans' lives are poor indeed? What is to be done to assure to every child born into this nation an equality of opportunity with all other children to experience the most complete and the richest education that he is capable of absorbing, and what is to be done to preserve the freedom of the schools and universities, and of those who teach, to perform their functions in perfect freedom from the bias and the bigotry of reactionary individuals and groups and from any tendency of government, local, state, or national, to infringe upon the freedom of the human mind? What is to be done to preserve and extend the freedom of the American citizen to speak on any subject whatsoever, privately or publicly, and to publish his thoughts, without fear and without restraint? What is to be done to preserve and extend the freedom of any person to worship or not to worship, as he may think best, and to proclaim his beliefs as he chooses, without the slightest implication of limitation or restraint? What is to be done to make sure that the freedom of this nation, as a member of the community of the nations of the world, shall be preserved, and that its influence in the world shall be exercised honestly and with the purest integrity in the name of freedom and happiness for the other peoples of the world? Above all, what is to be done to bring about a way of life in this nation that will bring to reality a genuine equality of opportunity in the economic, social, political and intellectual pursuit of happiness?

What shall be done to guarantee that there shall be a new birth of freedom in these United States—that we may not only find the solutions to problems that actually confront us, but that we may create new and viable values to enlarge and extend the old ones that have served this people so well?

When we seek to find what value a people places on freedom in speech, worship, press, and communication, one good indicator is by questioning the people themselves. This was done in Seattle.

A People Power questionnaire, published and distributed in conjunction with local television broadcasts, was composed of fifteen questions dealing with the freedom of speech, the press, the media and religion. Citizens evaluated the following:

1. The government should contribute to the support of private schools.

2. Teachers should be expected to teach in conformity with community values and opinions.

3. Employers have a right to discipline employees who criticize company practices and policies.

4. Freedom of speech is in danger in the United States because of actions of governmental agencies such as the CIA and FBI.

5. Freedom of speech is threatened by the existence and use of credit and data banks.

6. The schools should teach and encourage freedom of speech, including tolerance for unpopular ideas.

7. The FBI should be limited in its activities to purely criminal matters.

8. The CIA should be retained despite the findings of recent investigations.

9. Americans tend to take freedom of speech for granted and are not sufficiently active in defending it.

10. Academic researchers who concluded that blacks, as a group, are intellectually inferior to whites, as a group, should be allowed to present their findings and opinions to student assemblies.

11. The right to freedom of speech/press should include the right to unlimited publication of pornographic materials.

12. Policy decisions of church organizations should be monitored by the IRS to justify their tax status.

13. Television and newspapers fail to provide adequate opportunity for the expression of dissident opinions.

14. I would take up arms to defend my right to freedom of speech.

15. The Pentagon Papers were classified government documents; therefore, the New York Times should not have been permitted to publish them.

To each question the respondent was asked to indicate whether he (a) strongly agreed, (b) agreed, (c) was neutral, (d) disagreed, or (e) strongly disagreed. The totaled results indicate the following percentages of responses for each category:

QUESTION	(A)	(B)	(C)	(D)	(E)	ABSTAIN
1	9%	16%	6%	24%	39%	3%
2	12%	24%	7%	30%	18%	4%
3	10%	21%	7%	27%	27%	3%
4	33%	27%	6%	19%	9%	3%
5	23%	29%	11%	19%	5%	8%
6	49%	32%	4%	7%	3%	1%
7	36%	30%	5%	16%	8%	3%
8	27%	37%	9%	9%	9%	5%
9	41%	39%	5%	8%	2%	1%
10	20%	41%	9%	12%	9%	4%
11	12%	22%	10%	22%	28%	2%
12	18%	30%	8%	18%	16%	6%
13	19%	34%	11%	23%	7%	4%
14	30%	28%	10%	10%	6%	8%
15	16%	17%	6%	20%	32%	5%

The table presents clear evidence that the 2,171 persons who filled out the questionnaire were all very thoughtful citizens. If we ignore those who were neutral or abstained and we add together those who "strongly agreed" and "agreed" and all those who "strongly disagreed" or "disagreed," we find the following facts:

No. 1 25% agreed that the government should contribute to the support of private schools; 63% thought not.

No. 2 36% agreed that teachers should teach in conformity with community values and opinions; 48% disagreed— apparently these respondents believe the teacher should be free to teach nonconforming opinions if s/he thinks it wise.

No. 3 31% agreed that employers have a right to discipline employees who criticize company policy and practices; 54% apparently think that employers do not have that right.

No. 4 60% agreed that freedom of speech is in danger in the United States because of actions of governmental agencies such as the CIA and the FBI; 28% thought not.

No. 5 52% agreed that freedom of speech is threatened by the existence and use of credit data banks; 24% disagreed.

No. 6 81% agreed that the schools should teach and encourage freedom of speech; 10% disagreed.

No. 7 66% agreed that the FBI should be limited in its activities to purely criminal matters; 24% thought otherwise.

No. 8 64% agreed that the CIA should be retained despite the findings of recent investigations; 18% disagreed.

No. 9 80% agreed that Americans tend to take freedom of speech for granted; 10% disagreed.

No. 10 61% agreed that academic scholars who conclude, on the basis of their scientific research, that blacks, as a group, are inferior to whites, as a group, should be allowed to present their findings and opinions to student assemblies; 21% disagreed.

No. 11 34% thought the right to freedom of speech should include the unlimited publication of pornographic material; 50% thought not.

No. 12 48% agreed that policy decisions of church organizations should be monitored by the IRS to justify their tax status; 34% disagreed.

No. 13 53% agreed that television agencies and newspapers fail to provide adequate opportunity for the expression of dissident opinions; 30% apparently think they do.

No. 14 58% would take up arms to defend their right to freedom of speech; 16% would not.

No. 15 33% agreed that the New York Times should not have been permitted to publish the Pentagon Papers; 52% disagreed--that is, they apparently think the publication of the Pentagon Papers by the New York Times was justified.

If this sounding could be taken as a fair sampling of the opinions of the American public, it would indicate that the American citizenry is alert to the current dangers to freedom of speech and to freedom of worship. Unfortunately, it must be recognized that the persons who filled out and returned the questionnaires were those among the citizenry who already feel sufficiently strongly about the problem to take the trouble to reply—a highly selective group. As 80% of those responding indicated, it is their belief, and this probably may be true, that most Americans take freedom of speech and of worship for granted and do not feel the need for any sort of activity to keep those freedoms alive and viable.

Nevertheless, it is clear that among the 2,171 persons who responded, strong majorities favor the teaching of freedom in the schools, the freedom of expression in all things, including religion, the separation of church and state, the freedom and liberation of the communications media, the limitation of governmental interference in the private lives of the citizens, the freedom of speech among employees, the freedom of speech of scientists, even on controversial subjects. Finally, it is of note that a majority of the respondents expressed a willingness to take up arms in defense of freedom of expression.

It is to be noted that this questionnaire was concerned with the status and preservation of presently existing freedoms. It seems clear that the respondents feel the existing freedoms are in danger.

It seems appropriate to reflect upon the prospects for the future and the possibility of creating new freedoms for the pursuit of happiness in the new age that is dawning. In a world in which the population is multiplying at a frightening rate, it appears clear that the weight of the masses in human affairs must inevitably become greater and the role of the individual lesser and lesser. Already, as has been often noted, significant human actions are taken by groups of which the individual citizens are members--labor unions, churches, communities, the nations. As the population increases, especially on the national scale, it seems reasonable to suppose that group control may assert itself in economic, social, and political affairs. This means some form of collectivism, socialism, communism, or nationalism, with a consequent shrinking of the importance of the individual and, unavoidably, the effective whittling away, if not the complete obliteration, of the freedom of dissent, the freedom to worship or not to worship--in short, the entire reality of individual independence.

Add to this the fact that our society is pluralistic, with ethnic groups demanding recognition, autonomy, freedom, equality, even, at times, privileges not enjoyed by other groups. This is true, also, of religious bodies, labor unions, cultural and patriotic societies, and others. Our society is truly "e pluribus unum." The happiness of all, we are convinced, depends upon the preservation and extension of that bedrock of freedom that is the common foundation, not only of the happiness of all, but the sine qua non of future progress toward a greater and more universal good life.

A glance at the overall social and political conditions in the United States as of now (September 1976—year of the Bicentennial anniversary of the Declaration of Independence, with its doctrine of natural rights) reveals a set of conditions and practices that give reason to fear that our guarantees of freedoms are no stronger than they were—indeed, there are some bits of evidence that might lead us to believe our freedoms are less secure than ever.

For example, the United States District Court of this District has just ruled (Seattle Times, August 25, 1976) that the Seattle police were justified in raiding (on June 20, 1976), without search warrants, a Seattle apartment suspected of being occupied by "radicals." Apparently the police did find a certain quantity of radical literature, some weapons, and materials from which might have been constructed a bomb. As Federal Judge Morrell E. Sharp is quoted as having concluded, the police "stumbled on what reasonably appeared to be criminal activities." This certainly appears to be a justification of a clear violation of the Fourth Amendment to the Constitution. We may be justified in asking whether we are to depend upon achieving justice and preserving the Fourth Amendment to the Constitution by unconstitutional police "stumbling."

In the area of freedom of the press, there have been a number of victories. The U.S. Supreme Court struck down, for example, the so-called "Nebraska gag order"; other courts, state and federal, have issued orders preserving the rights of the press to report court proceedings; the Florida Supreme Court threw out a contempt-of-court conviction of a reporter who refused to reveal the confidential source of his information.

At the same time, in California a reporter has served time in jail for refusing to reveal the source of certain information in the Manson trial; two reporters of the Fresno Bee are in jail for refusing to reveal their sources (Seattle Times, August 22, 1976). (These two now have been released.)

As milestones of progress, it is to be noted that the Freedom of Information Act and the Right to Privacy Act are now on the federal law books. Unfortunately, they are being only partially and ineffectively enforced. In this state Professor Arval Morris has proposed a state constitutional amendment to protect the privacy of individual citizens (Seattle Times, November 17, 1975).

So far as it is possible to observe, the FBI and the CIA continue their spying upon the affairs of private citizens. Even in science itself, where surely the human mind should be left free, we learn that there is a move under way to stop or suppress research in the field of behavioral genetics on the ground that the results of the research may be "racist" in their implications. The Equal Rights Amendment continues to fall short of the necessary number of state ratifications.

In one of the areas involving the privacy of the individual and the freedom of the press, we are still at sea. This is the area of sexual freedom among adults and the publication of materials by some called pornography. Sexual relations among adults and sexual thinking, as well as abortion, are strictly private matters, and it is to be questioned whether the state should be allowed to interfere in such matters or discriminate against "gays," "Lesbians," prostitutes, sexually-oriented magazines, or any others whose individual inclinations lead them to the enjoyment of sexual life in unconventional ways.

The rights of freedom of worship and the freedom of private religiously-oriented schools are not yet secure. Certain notable victories have been achieved, as in the case of the Reverend Levi Whisner and the Tabernacle Christian School, in the little town of Bradford, Ohio (Seattle Times, August 12, 1976), a case called State of Ohio v. Whisner. In this case the State of Ohio undertook criminal prosecution against a group of parents who organized and sent their children to an "unchartered" religiously-oriented private school which provided basic education plus an indoctrination in the Bible and the religious faith of their parents. On July 28 of this year, Judge Frank D. Celebrezze of the Ohio State Supreme Court condemned the dictatorial nature of the Ohio "minimum standards" for schools applying for charters for allowing no time for religious instruction. All school activities, according to the "minimum standards," should conform "to policies adopted by the [state] Board of Education." Under the Board's rules, the "organized group life of all types must act in accordance with established rules of social relationships and a system of social controls." In other words, the state's regulations required complete conformity with the standards set by the Board, without possibility of discretion on the most elementary nonconformity. Judge Celebrezze ruled that the Board's requirements would result in "the absolute suffocation" of independent thought and educational policy. The effect of the standards, he said, is "to obliterate the philosophy of the school and to impose that of the state."

This was a victory worth noting. But the very fact that the State of Ohio tried to suppress the religious and educational freedom of the parents who established the Tabernacle School may be taken as a warning to citizens of other states that there must be eternal vigilance against the "state-ists" who would force all schools, public and private, into the strait jacket of conformity to a state-dictated formula for education.

Another aspect of the need for freedom of the churches is illustrated by the Declaration of the Most Reverend Joseph L. Bernardin of Cincinnati, president of the National Council of Catholic Bishops (reported by UPI on August 17, 1976), that the "church does have an influence on political order," although it "does not involve itself in partisan politics," and "at all times it must maintain its freedom to speak out clearly on any issue." The issue in this instance that led to the statement was the question of a constitutional amendment banning legal abortions; no matter what be the issue, the principle of the freedom of the churches, the ministers, and the congregations of all sects to speak out on all matters concerning the welfare of the people may not be challenged, any more than the same freedom of non-religious groups to speak out.

It is no longer possible to limit the struggle for freedom to national affairs. Human freedom is a worldwide problem. The United Nations Organization recognized that fact in the Universal Declaration of Human Rights, and the members have given lip service to it. But the racial situation in South Africa and Rhodesia, slavery, human torture practiced in Latin America and elsewhere, the suppression of freedom of speech, press, and religion in many countries—all these and others witness the worldwide fact that most of the peoples of the world do not enjoy even the minimum degree of freedom. It is suggested that a loss or suppression of freedom in one part of the world affects the freedom of the peoples of all the world, including Seattle.

The most obvious cause for the loss of freedom and equality in other parts of the world is, of course, the shortage of food. As Nick Eberstadt has said ("Myths of the Food Crisis," in New York Review of Books, February 19, 1976, pp. 32-37), "it is impossible to separate the issue of unequal food distribution (which is the question behind the food crisis, not some absolute lack of food) from the acceleration of inequality which the development of the world economy has encouraged. Historically, the food crisis is merely the most recent in a long series of manifestations of inequality between the rich and the poor worlds."

We observe with satisfaction and some encouragement such international conferences dealing with human rights as the so-called "Habitat Conference" held under the auspices of the United Nations in Vancouver, Canada, during the spring of this year, but with great disappointment that the world community of nations is so badly divided within itself as tragically to retard the achievement of any definite, tangible programs for effective international action. Yet the very fact that the conferences are held may be taken as one short step toward international action to ameliorate the deplorable conditions of the poor of the world and toward the achievement of a greater degree of equality and of freedom among the world's peoples.

When we ask ourselves what impact a local discussion—such as that sponsored by People Power in the "New Birth of Freedom" program—has, we have to recognize that the chief nature of the impact probably will be of an educational and alertive nature. The major problems have not been solved. They remain; the struggle for freedom is eternal. As Pericles is reported to have said, five centuries before Christ, "to be happy requires freedom; to be free requires courage." Or, to reiterate the modern truth, "the price of freedom is eternal vigilance."

Against whom? Against those of our fellow-citizens who mistakenly believe that the preservation of some freedoms requires the suppression of others. This is a battle of intellects, of convictions, of philosophies. Let us have not less freedom, but more.

How? By legislation. By laws. By constitutional amendments. Above all, by the election of men to the legislatures who believe in freedom and by the appointment of such men to courts as judges and judicial officers. By education. By use of the communications media. By the support and encouragement of such freedom-oriented organizations as the American Civil Liberties Union. By a rededication to the principle that this nation was "conceived in liberty and dedicated to the proposition that all men are created equal" and that, for the most perfect pursuit of happiness how and in the future, it must remain so.

Freedom and Equality

Bonnie Leary
Professor of Philosophy
Edmonds Community College

This paper is an attempt to clarify the impact of the "New Birth of Freedom" focus on the issue of freedom and equality by looking, first, at where we are, and then, at where we might go.

First, it assesses what we have learned about our community in relation to freedom and equality by answering the following questions:

1. How is the issue currently defined?

2. Which aspects of the issue are most important to the community at the present time?

3. What community values do these aspects of freedom and equality bring to the foreground?

4. How do these values affect the structure of the community and the lives of individuals within it?

5. Does the present situation work for or against enhancing these values? How?

Second, it offers suggestions about the possible future directions of our community in relation to the issue of freedom and equality by discussing this second group of questions:

1. How are currently emphasized aspects of the freedom and equality issue impacting upon our freedom at the grassroots level?

2. What changes might occur in our conception of the value and nature of freedom and equality as we grapple with these issues?

3. What do we need to do?

4. What specific steps could the community take to implement its values and preserve and develop its freedoms?

What is freedom? What is equality? What do persons need to be free and equal? The answers given to these questions reveal how the issue is currently defined by our community.[1]

Although there was no explicit discussion of the variety of possible definitions traditionally given for each term, one concept of the meaning of freedom and two concepts of equality dominated all discussions during the "New Birth of Freedom" program. Freedom was interpreted along liberal or negative lines as lack of interference and/or obstacles to the satisfaction of existing wants, all wants being viewed as equally deserving of satisfaction. In other words, freedom is thought of in abstraction from its relation to other values such as justice, equality of opportunity, etc., and therefore is seen as conflicting with and/or being threatened by such other commodities.[2]

Equality is defined from two complementary perspectives as Equality of Opportunity and Equality of Result. Equality of Opportunity is seen as the abstract or ideal counterpart of Equality of Result whose concrete materialization is considered to be the substantive test of the country's actual assent to Equality of Opportunity as more than a pretty thought. Equality of Opportunity is defined as an equal chance to (1) develop rational and moral capacities and fulfill potential, and (2) gain access to the material goods and positions of power within our society without the characteristics of race, color, sex or religious belief, influencing success or failure (characteristics which are claimed to be irrelevant by persons of good will and specifically, in our case, by U.S. constitutional, statutory and common law.

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[1] This discussion of the community in relation to freedom and equality is drawn, for the most part, from scripts of local television broadcasts produced for People Power and a questionnaire published and distributed in conjunction with those broadcasts. (Full results of the questionnaire can be found in the appendix of this paper.)

[2] Is there a possibility of raising community consciousness of freedom in relation to these other goals? Although from one perspective they do make competing claims, from another they are mutually reinforcing. See page 17 of this paper.

In relation to Equality of Opportunity, Equality of Result exists when limited goods are not allocated on grounds which a priori exclude any section of society by reference to irrelevant characteristics. Presently, Equality of Result is being measured under the following six areas: (1) Education; (2) Housing; (3) Employment; (4) Life Options; i.e., the possibility of upward mobility, the possibility of entering a large number of professions or choosing from among a variety of lifestyles; (5) Income; (6) Power; i.e., impact on the decision-making end of policy in government, big business, labor, universities.

In brief, then, Equality of Opportunity focuses upon eradicating the effect of irrelevant characteristics upon a person's chances for fulfillment and success. Equality of Result is the concrete measure of whether or not Equality of Opportunity is operative via a tally of a minimum acceptable level of want-satisfaction in six major areas where material fulfillment and success can be measured.

Which aspects of the issue are most important to the community at the present time?

Presently, community concern is focused upon government policies of affirmative action which the majority feel have resulted in reverse unjust discrimination.[3]

Stated briefly, the reasoning behind community disapproval of current affirmative action policies is as follows:

In any situation in which goods are limited, discrimination or choosing among persons in the allocation of goods, is inevitable. The question is, "What are just criteria or relevant characteristics upon which such choices should be based?" Especially when equality is the goal, reverse discrimination cannot be used as a means. It is a self-contradiction to attempt to end discrimination on the basis of characteristics of race, color, sex or religion by using these very characteristics as those which are relevant for the purposes of choosing among persons and therefore perpetuating the very model of unbenign discrimination we are trying to eliminate. If it is considered morally wrong to discriminate against persons because of skin color, sex, etc., then it is always wrong to base choice upon such characteristics.

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[3] Affirmative action is defined in this paper as preferential treatment for disadvantaged groups enacted as a means towards realizing equality of opportunity as an actual fact in our society. See questionnaire at the end of this paper developed by People Power on the issue of freedom and equality, especially results on questions 4, 7, and 9.

The majority of persons in our community feel that the practical result of present affirmative action policies is just such reverse discrimination. Therefore, while Equality of Opportunity and Equality of Result remain community goals, present affirmative action policies and concomitant reverse discrimination are those aspects of the freedom and equality issue most important to the community.

What community values do these aspects of freedom and equality bring to the foreground?

Our community values: diversity, independence, equality, justice and other persons. These terms are defined briefly as follows:

A. Diversity:
  (1) As a concrete expression of freedom; freedom to be unique, to be an individual, to break with traditional stereotypes and prejudices, to be independent, to direct the course of one's own life.
  (2) In contrast to homogeneity in the population's cultural, ethnic, social and economic background, age and education. Such diversity is seen as enhancing and contributing to the quality of life.

B. Independence:
  (1) As an expression of the strength of character needed to break away from traditional roles and patterns.
  (2) As the right to control the course of one's own life versus the imposition of outside structuring not previously assented to.

C. Equality:
  (1) Of Opportunity which has been locally defined as having the same chance with selection determined on the basis of ability rather than irrelevant characteristics.[4]

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[4] From the scripts of the KING-TV broadcasts on the issue of freedom and equality.

D. Justice: (1) Recognition of a moral responsibility for past injustices and a corresponding duty to actualize Equality of Opportunity and Result.

E. Persons: (1) In moral recognition of the bond of common humanity.

(2) In respect for the dignity and intrinsic worth of human beings.

How do these values affect the structure of the community and the lives of individuals within it?

An overwhelming majority of community members[5] responding to the People Power questionnaire recognize that a problem exists and that it is due to past and present social policies and laws. This may appear to be merely a statement of the most obvious, but actually such recognition is a giant step towards the realization of community goals. Admitting a situation is wrong is one thing; admitting that we, our policies, institutions and laws, brought this situation into being and are perpetuating it, is another. The second assertion is not only an assumption of a collective moral responsibility for present inequities, but the recognition of the efficient causes of these inequities: those policies, institutions and laws which have given long standing preference to white males. (See Item D under how our freedoms are impacted at the grassroots level later in this paper.)

In terms of community structure and the shaping of individual life patterns and choices, a collective moral responsibility is developing. By collective, I mean group rather than individual responsibility. Individuals are willing to assume accountability, and the sacrifices it will entail, providing accountability is assumed by the community at large. Reasoning along these lines, it would be probable that a decision to raise taxes to support alternative job training programs as an affirmative action program would be more likely to receive support than current policies where only individual members of the community (those who did not receive preference for the job, etc.) have sacrifices imposed upon them singularly.

Does the present situation work for or against enhancing these values? How?

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[5] 77%, People Power Questionnaire.

Present affirmative action policies are seen as regulations structuring the community from the outside and placing what is viewed as a collective responsibility on individual shoulders. Therefore, present affirmative action policies are met with much negative feeling, resentment and resistance. The goals, equality of opportunity and equality of result, are viewed as legitimate and desirable, but the means toward these goals are rejected since they conflict with community values discussed above.

With goals desired and means rejected, the practical result is (1) the stifling of real progress towards equality of opportunity and equality of result, and (2) a tendency towards eradication of feelings of community in the face of a situation in which individuals feel they can be singled out for reverse, unbenign discrimination while others, with as equal moral responsibility for our present system and resulting inequities, make no sacrifices at all.

In discussing the possible future directions of our community in relation to this issue, the first question is how are currently emphasized aspects of the freedom and equality issue impacting upon our freedom at the grassroots level?

Dissatisfaction with national affirmative action policies is presently impacting our community in two seemingly contradictory ways: it is causing conflict, division and antagonism on the one hand, and planting the seeds for a resurgence of united community effort on the other.

The reverse discrimination approach would:

A. Impose sacrifices on others which many feel are unjust and which they resent.

B. Include individuals of lesser need while excluding others with greater need, thus bringing the interests of groups of disadvantaged persons into conflict.

C. Undermine the function of the government as educator. It has taken nearly 300 years to firmly establish the principle that color is irrelevant to the worth of an individual. Studies show that persons can be convinced by consistent logical or moral arguments, but when receiving conflicting messages, people tend to listen only to what they want to hear.

D. Place in question the security of all, since the establishment of government policies for preferential treatment might conveivably be used as precedent for future unbenign discrimination.

E. Be interpreted as paternalistic and, therefore, a derogatory comment upon the abilities of those whom such policies seek to protect.

Because of all these undesirable effects, people in the community have asked whether equality of opportunity must entail reverse discrimination.

They have begun to question whether there have to be any single victims. As a community, we have focused attention on the issue of "red-lining," an area where everyone's freedom and equality is being threatened. Hopefully the negative energy awakened by current affirmative action policy will be channeled into constructive grassroots activity. Suggestions for areas of action follow later.

What changes might occur in our conception of the value and nature of freedom and equality as we grapple with these issues?

Traditionally, the U.S. has valued freedom more than equality. Our system is based on the claim that only the maximum inviolable free area compatible with the minimum amount of legislation needed for the harmonious functioning and protection of society will yield the good results of human growth and progress, both moral and material. The argument has been that state power should not be used for ideal ends, that all wants are equally valuable, and that ideals, beliefs, tastes, etc., cannot and should not be legislated. The claim is that it is futile to employ state power for ideal ends because character and belief cannot be changed for the better by political means. Only autonomous decisions yield good results in these areas. But, the first claim is false: just over a hundred years ago slavery was considered both necessary and justifiable by a large number of persons here in the U.S. The second claim is, itself, based upon an ideal: individual autonomy is given an absolute weight in relation to all other values; e.g., equality and justice, which are also valid ends and make competing claims.

The government cannot remain neutral between ideals. Social and economic institutions have a legal basis and the choice of which kind of institutions is based on ideal grounds. The fact is that political, social and economic institutions set up a particular structure of incentives, a structure which can be altered. To ignore the ideal grounds of the system is to opt for the status quo while evading responsibility for it.

Therefore, we need to consider the implications of the concept of freedom now operative in our society at large, and, locally, in our own community. What are the effects of placing an ultimate value on individual automony and the laissez-faire systems which result? We need to clarify our objectives as a people and decide whether or not we should redefine our concept of meaningful freedom in order to attain other goods: substantive as well as de jure equality of opportunity, and a more equitable distribution of wealth and power.

Certainly, some inviolable free area must exist because without moral and rational freedom men can no longer develop as human beings, but it should be obvious to us by now that the extreme advocacy of individual autonomy has led to political and social policies destructive of that liberty itself for large segments of our population. This is reflected in government sanction for the concentration of wealth, income and political power in 10% of our population.[6]

Unrestrained capitalistic competition and laissez-faire systems negate their very aims since they fail to provide the minimum conditions in which any significant degree of liberty can be exercised.

Since the failure of our system during the depression, we have been aware that the gross inequities in the distribution of wealth and income in our society have their roots in a concentration of economic power in private industry. Still we remain the only major country in which the monetary power is independent of the government and does not have to respond to priorities set in the political process. World War II demonstrated that full employment was both feasible and beneficial to our system, yet our unemployment rate varies between 5-9% while that of other Western capitalistic countries is between 1-3%.[7] In the light of such facts, we should recognize that our problems are not technological, but ideological.

We must begin to confront questions like the following:

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[6] Sumner Rosen, Associate Professor, School of Social Work, Columbia University, speaking on the topic "Towards Equality Through Employment," at the conference, Freedom From Want: Towards More Equality, co-sponsored by Seattle Urban League, April 23, 24, 1976.

[7] Id.

Should the private sector have the freedom to make the kinds of investments which are not socially validating?

Should freedom ever mean the freedom to exploit?

Is freedom the right of 10% of our population to perpetuate the status quo?

How does freedom as individual autonomy relate to the intrinsic worth of other human beings?

Should we continue to prioritize individual freedom regardless of the consequences to other persons, to the environment?

Assuming we still desire the minimum level of outside interference compatible with the maximum implementation of other values, how much would we have to change our values, practices and concepts for freedom to become compatible with Equality of Opportunity and Equality of Result?

In the past, in the area of government, we have always viewed freedom as freedom from: freedom from the evils of a despotic democracy, from a government entitled to interfere in every aspect ot an individual's life. But today, in a growing awareness of the meaning of human dignity, our concept of freedom is shifting to an emphasis on freedom for: freedom for justice, for an equal chance, for an equitable amount of all our nation has to offer. We have begun to draw a distinction between a man's rights and his power to secure them. We have begun to seriously recognize that other ends are as valuable as individual autonomy, that, in fact, without Equality of Opportunity, without a minimum acceptable level of economic equality, individual freedom itself becomes valueless because it is purely an abstraction.

What do we need to do?

What specific steps could the community take to implement its values and preserve and develop its freedoms?

We need to:

A. Rethink our traditional concept of individual freedom as the ultimate good by linking meaningful freedom with the values of justice, equality, community and quality of life.

B. Encourage private industry to make socially desirable investments via tax incentives or government reduction of private power to make investments destructive of socially agreed upon goals.

C. Provide incentives, through federal as well as local government, for banks to change lending policies based on conformity criteria. Present lending policies based upon conformity rules have been shown to be a major contributing cause of our segregationist housing patterns and the attendant inequities in educational and job opportunities.

D. Work towards a more equitable redistribution of economic resources and power, especially through equal representation of qualified minority persons and women in top level positions in the areas of decision-making in universities, government, industry and labor.

E. Promote a resurgence of local voluntary action against "red-lining" and against those practices of local business and labor unions which reinforce discriminatory patterns by raising community awareness of the specific local cause of local inequities. (For example, local union hiring practices could be a major contributing factor in the number of untrained unemployed: if you cannot become an apprentice, you will never be a journeyman, always a day laborer.)

F. Actively develop the nascent sense of collective community responsibility by combining this with the community's value of independence from outside structuring and desire to direct the course and future of local development ourselves.

G. Adhere to the "color-blind" principle and look for alternative anti-bias techniques to reach our goal of ending unbenign discrimination. We need a means consistent with our ends. Affirmative action programs should be developed which emphasize and draw strength from community incentives for reaching the goals of Equality of Opportunity and Equality of Result. The following are given as examples of practical, utilitarian considerations:

1. Poverty and the social ills which cluster around it are great causes of crimes. A reduction of the former would reduce the latter.

2. The general level of prosperity would be raised by transforming welfare recipients into productive income producers.

3. The Coleman and Civil Rights Commission Reports prepared for the Office of Education provide some evidence that the correction of racial imbalance in the public schools would produce a higher level of educational achievement in both races.

4. De facto unbenign discrimination seriously distorts the perspective and understanding of all persons in the society. A democracy limited in one direction is susceptible to limitation in others; e.g., people, especially children, lose respect for and trust in the system.

5. The community loses the contributions of a large section of its members. The waste of intellectual ability alone, in a society increasingly dependent upon technology and technological skills, is irrational.

H. Given the above arguments for actualizing substantive Equality of Opportunity as well as arguments given against present affirmative action policies, it seems wisest that we develop neutral principles which will implement our goals of Equality of Opportunity and Result without using ideally irrelevant characteristics as criteria for the distribution of compensatory treatment. Neutral principles must be devised which avoid the problems of: (1) instigating resentment among the general populace, (2) causing division among disadvantaged groups, and (3) being judged as paternalistic by their beneficiaries.

Two suggestions towards policies capable of meeting such requirements follow:

A. The imposition of collective rather than individual sacrifices. Taxation seems the simplest method.

B. Differential treatment based directly on need specified in terms of past educational opportunities and economic status including job skills.

This would be both practical and efficient since statistically measurable criteria could be used to determine which persons would qualify for preferential treatment. Additionally, programs based on this principle would favorably affect a diversity of persons and thus be more likely to gain general support and less likely to be judged paternalistic by minorities.

Information compiled from the People Power focus on freedom and equality shows that while our community values and desires substantive Equality of Opportunity, present affirmative action policies are seen as (1) issuing in reverse unjust discrimination and (2) placing what the community views as a collective moral responsibility for present inequities on individual shoulders.

In the light of this information it seems wisest that we develop neutral principles which will implement our goal of substantive equality of opportunity without using ideally irrelevant characteristics (e.g., race, color, sex, religious belief) as criteria for the distribution of compensatory treatment. Neutral principles must be devised which avoid the problems of (1) instigating resentment among the general populace, (2) causing division among disadvantaged groups and (3) being judged paternalistic by their beneficiaries.

"FREEDOM AND EQUALITY" QUESTIONNAIRE RESULTS
426 Respondents

(A) Strongly Agree
(B) Agree
(C) Neutral
(D) Disagree
(E) Strongly Disagree

1. EQUALITY FOR ALL HAS BEEN LIMITED IN OUR SOCIETY BY POLICIES AND LAWS THAT HAVE GIVEN LONG-STANDING PREFERENCES TO WHITE MALES.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
44%	31%	3%	9%	8%	2%	3%

2. I AM CONCERNED THAT CURRENT EFFORTS TO PRODUCE EQUALITY COULD DESTROY THE BASIC VALUES AND PURPOSES OF OUR SOCIETY.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
23%	14%	3%	26%	28%	3%	4%

3. EQUALITY OF OPPORTUNITY WILL NEVER BE A FACT IN THIS COUNTRY UNLESS WE INSIST ON EQUALITY OF RESULTS AND HAVE THE INFORMATION TO MEASURE THOSE RESULTS.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
23%	30%	7%	10%	9%	13%	8%

4. LAWS THAT RESULT IN BIAS FOR WOMEN AND RACIAL MINORITIES ARE NOT THE BEST WAY TO CORRECT THE ABUSES OF THE PAST.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
33%	29%	6%	16%	8%	2%	4%

5. WOMEN AND MINORITY-GROUP MEMBERS NEED MORE, NOT LESS, ANTI-BIAS EFFORT BECAUSE THERE IS STILL A GREAT DISPARITY BETWEEN THEIR INCOME AND THE REST OF THE POPULATION.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
26%	36%	8%	13%	8%	4%	5%

6. UNTIL GOOD JOBS ARE PLENTIFUL AND AVAILABLE TO ALL IN OUR SOCIETY, CORRECTING THE RESULTS OF PAST DISCRIMINATION MUST INVOLVE SACRIFICES BY THOSE WHO ENJOYED PREFERENCES IN THE PAST.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
24%	30%	5%	17%	15%	3%	5%

7. IT IS NOT RIGHT TO CORRECT DISCRIMINATION AGAINST SOME GROUPS BY REVERSING THE PROCESS AND DISCRIMINATING AGAINST OTHERS.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
41%	30%	7%	11%	5%	3%	3%

8. I FEEL MY FREEDOM IS THREATENED BY EFFORTS TO ENFORCE EQUALITY.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
19%	11%	9%	26%	30%	2%	3%

9. IT IS NECESSARY TO GIVE ACTIVE PREFERENCE TO THE VICTIMS OF PAST DISCRIMINATION TO ASSURE FUTURE EQUALITY.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
17%	22%	10%	26%	20%	1%	4%

10. EQUALITY AND FREEDOM WILL BE IN CONFLICT IN OUR SOCIETY UNTIL ALL PERSONS HAVE EQUAL ACCESS TO THE NECESSITIES OF LIFE.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
35%	32%	6%	9%	6%	4%	8%

11. EDUCATIONAL INSTITUTIONS SHOULD LOWER ADMISSION STANDARDS AND PROVIDE REMEDIAL TRAINING IN ORDER TO INSURE EQUAL ACCESS TO THEIR GRADUATE AND PROFESSIONAL PROGRAMS.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
11%	15%	7%	25%	34%	4%	5%

12. IT WOULD BE MORE PRODUCTIVE IF GOVERNMENT DEVOTED ITS RESOURCES AND EFFORT TO CREATING MORE JOBS INSTEAD OF DETERMINING HOW EXISTING JOBS SHOULD BE DISTRIBUTED.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
24%	30%	12%	13%	8%	5%	8%

13. LENDING INSTITUTIONS SHOULD BE PROHIBITED FROM GIVING PREFERENCE TO NEWER NEIGHBORHOODS WHERE RESIDENTS HAVE SIMILAR ECONOMIC, ETHNIC, AND CULTURAL BACKGROUNDS.

(A)	(B)	(C)	(D)	(E)	Abstain	Objection
31%	27%	6%	12%	6%	6%	5%

Freedom and Learning

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Seattle area schools are prey to the same criticisms as educational institutions throughout the country. There are a number of differences however and this paper will outline them, set them in the perspective of current developments and offer possible solutions. Much has been said about the Founding Fathers' emphasis on the importance of education as a means of preserving democracy. This is as true today as it was then. Yet, in the bicentennial year, it is improtant to re-examine even our most basic historic assumptions, appraise them, and expand or discard them. One such notion is education as panacea. Critics of the public systems should be reminded of the limited ability of schools to mold individuals. Hence, laying the cause of society's ills at the doorsteps of the schools bears limited credence to those admitting complex influences on the developing pupil. The pre-industrial state of Thomas Jefferson and John Adams provided fewer distractions for the average student than today's media-inundated leisure society, in which even the most advanced pedagogical techniques can sometimes fail to impress the child who grew up in front of a television. The nature of viewing television, which has been incorporated into recent "programmed learning" systems, is essentially passive. The familiar statistics about preschool children spending one-third of their lives in front of the set result for many children in a considerably altered openness to learning and the hard work that learning is.

This, coupled with other influences on young people which stress stimulus rather than response, requires teachers to revise curriculum to attract bored pupils. "Relevance" has been one such development and this has been seen especially in the post-secondary curriculum of the 1960's.

The law states the student must remain in school until some predetermined age, typically, sixteen. The horror stories about children emerging from high school unable to read are now legendary. Yet are the schools solely to blame? Surely, another factor is the encouragement to learn the child receives at home. Parents must realize once and for all that blame for inadequate schooling must be shared. Also, it should be noted that learning need not and should not only occur within the schoolroom. Much current prescriptive thought on education suggests that all community resources (theatres, tradesmen, libraries, parks) be drawn upon either as a supplement or a complete alternative to the classroom.

Compulsory public education cannot, it now seems, be all things to all children. The very notion of compulsory public education, its attendant problems, and equally problematic alternatives and concomitants (lowering the school-leaving age, intensifying trades education), should be a primary point of discussion among community leaders. Enforcing this law, a fundamental, though not unassailable American concept, should, in the meantime however, preoccupy those concerned with the welfare of our schools. If young people are to be sent to school for twelve or thirteen years, then they deserve some guarantees that, provided they make an effort themselves, their time will be well spent.

What are the current questions in American education? There are many perplexing and enigmatic questions that face public education today vis a vis its role, function, and expectations of American society. Polemics concerning what education is, how it should be administered, organized, and delivered have dated back to the before the Age of Enlightenment. The issues that Plato, Locke, Rousseau, Dewey, Mann, and others raised are still being debated in every undergraduate and graduate course in education. Today, many issues, still historically bound, concern public education. Let's examine them briefly.

What should be taught? Arguments about what should be taught in public schools can be heard in every faculty room. Different approaches have been experimented with from the rigidity of prescribed programs of the Victorian Era to the laissez-faire approach of A.S. Neill's Summerhill. We have seen the Socratic method employed in today's law schools; the open school individualized learning approaches; teaching machines; the college mentor approach; competency-based programs; independent study; the classics; and student-derived curriculum. Should schools teach "life skills"; vocational skills; basic skills; college prepatory programs; abilities for tomorrow's survivals and the nature of today's employment realities? What should be taught and how should we teach it? Should it be decided by individual students or faculty or prescribed by national norm performance expectancy data?

What should the community do? Another pressing issue in contemporary public education is the role of the community. The reality is that public education is financed through public taxes. Given this reality, many citizens want community control of schools while others defer to school professionals for the best decisions. Some communities want to decide on governance procedures, finance allocations, teacher selection and dismissal, curriculum, and facilities, while others pay taxes and want to leave the business of schooling to educators. American public education has experimented with many varieties of community involvement from the neighborhood school concept to private schools; from centralization to decentralization; from elected school administrators to appointed ones. Experiments have tended to engender more controversy than answer questions. What is the role of the "public" in public education and should the public, public educators, or both, define and facilitate what happens to the student?

What rights does the student have? Equal protection under the law is still another current issue in public education. The right to due process and constitutional protection of students is still being worked out. Many school age children have become "push outs", "drop outs", suspended, denied access to, or have received inappropriate educational programming. Students are demanding an active participatory voice in their education. The historical concept of schools standing in loco parentis still has a strong hold on schools.

Who pays? An ever increasing issue in public education is that of finance. As the citizenry is taxed more and more, public backlash is more than palpable. School bond or levy issues are voted down continuously (see below). Interestingly, school taxes are one of the only taxes that the public really has a collective say in--the plebiscite approach is used every year with the answer of "no" on the upswing. Should the states or the federal government increase their financial support of education and as such also have increased demands on educational and programmatic accountabilities? The disproportionate use of the property tax as the main funding base has a gross implication: the richer communities can afford better schools while poorer ones cannot.

What rights does the teacher have? This question raises another issue. The right to strike, teacher tenure, academic freedom, (see below) working conditions have been the basis of many teacher walk-outs. The growth of teacher unions as a "Johnny come lately" to the labor union movement has had a profound impact on public education with many citizens concerned about the labor union-teacher union parallels. The militancy of teacher unions seems as deleterious to school clientele as the formerly acquiescent approach.

Many other issues such as educational accountability, continuing education governance, student rights, testing, placement, racial and ethnic justice, school law, just to name a few, keep public education in a constant flux of definition and re-definition. One wonders: Are these constant patterns pathological or necessary?

The Problems Facing Seattle Schools: Some Warnings

> "It is illogical to support schools with unreliable and inequitable property tax bond issues." (Citizen responding to People Power, Seattle Post Intelligencer questionnaire.)

Washington State residents are mistaken in their notion that they have the option of not supporting public schools. The current inadequate financing system of levies based on property taxes continues to be a problem. Good schools require good, steady funding. Seattle schools have slipped from tenth in the nation per capita funding to twentieth.

To not vote for a levy financing schools and then to criticize deteriorating schools belies a widespread attitude in the Pacific Northwest: This is where the "Good Life" occurs. Here Americans can flee the blighted eastern and mid-western cities with their oppressive tax structures, breathe fresh air, take part in the community, and, wonder of wonders, choose whether or not to increase their own taxes! The levy system and the referendum are theoretically instruments for greater democracy. Yet the combination of an economic recession in Seattle and an attitude on the part of many voters has rendered the levy system a dismal failure. This regional sentiment of "let me alone-just don't raise taxes" is evident in the scandalous inaction of the state legislature in Olympia to search out a more dependable form of revenue raising for schools. State politicians, unwilling to alienate voters, are reluctant to support measures designed to restructure state school financing, eg., a graduated state income tax. The current suit by Seattle Public Schools against the State of Washington is an example of local school districts, desperately underfinanced, fighting back. The Seattle Schools claim the State is failing to fulfill its constitutional duty to provide adequate support for local education. Until there is action in Olympia, school districts, especially urban ones, will be unable to provide continued quality educational services.

The legislators and voters' attitudes about school financing are but only one of the problems facing educators in Seattle and around the state. The specter of court-ordered busing haunts Seattle and once again the reality of segregation in Seattle's schools, as evidenced by the federal government's warnings to the system this spring, belies a prevalent attitude among many citizens that there is no problem. Another facet of Seattle's complacent posture toward urban crisis is that the overwhelming brunt of activism in Seattle involves maintaining or improving the "Good Life" (e.g., noise control, downzoning, architectural preservation, environmental protection) rather than those issues affecting less privileged segments of the community (e.g., the poor, blacks, the handicapped, the aged). Precepts of the American Revolution concerning widespread assurance of education will not be validated in Seattle until equality of opportunity in education is available to all.

Whether the city's much vaunted Voluntary Racial Transfer Program will satisfy federal authorities remains to be seen. Despite vociferous opposition to busing by Seattleites unwilling to face educational inequities in this most "livable" of cities, residents should recognize the legal inevitability of court-ordered busing should the current program be deeméd unsatisfactory by Washington, D.C.

Teacher's salaries and the freedom of the teacher in the classroom are also problems that must be faced. The time has come for the Victorian notion that teachers should be underpaid and overworked to go once and for all. Any new method of financing schools must take two items regarding teachers into consideration. First, an acceptance of the idea that teachers must be better paid. Good salaries attract good teachers. The future of the profession, not to mention the school system, may very well depend upon its ability to attract dedicated young teachers confident that they will be able to earn a decent living.

Second, it must take into account the ever increasing trend to "vertical" decision making, that is, classroom decisions made by top-level administrators. Decisions about curriculum and in-class methods should be up to the individual teachers and their department chairpersons providing the results are in line with reasonable expectations set by the system. Primary and secondary teachers cherish their academic freedom no less than college professors and this, the relative autonomy of the teacher—so long subject to winds of political change—must be insured. Recent cases of Seattle school teachers embroiled in academic freedom cases, though not widely publicized, bespeak an administration unconfident of the professional integrity of its employees. The community will be persuaded of the wisdom of this freedom when students emerge from public schools able to pick and choose their own political ideologies or taste in literature, because of the breadth of opinion and liveliness of inquiry demonstrated by their teachers.

Behind all the pother about the schools and the allergic reaction to increased taxation lies another shibboleth: only parents of school children should pay for schools because only they are affected. Holders of extensive taxable properties are those most likely to pay a proportionately higher state income tax should that method be instituted to finance schools. And it is often these people who are most critical of current education. They should realize they too will benefit from a fine, healthy, vigorously supported school system for they are often the beneficiaries of the products of such a system. It is essential that Seattleites recognize that support for good education is a shared fiscal responsibility: the responsibility of insuring through today's students the continuation and evolution of our city and society at large. Whether or not one has children, the support of public education is a citizen's democratic duty and privilege.

As part of the Freedom and Learning project in September 1975, People Power conducted a survey on what the most important tasks of public learning were. The following represents data and subsequent discussion in response to this question. (Data from only the highest rank 4 dependent variables are discussed. The table at the end of the article displays aggregate data for all 26 dependent variables.)

The most important tasks of public education are:

Attention to basic skills. Of those responding to the questionnaire 93% indicated that attention to basic skills was a most important task of public education. By far the consensus on the importance of this task was the highest recorded. A number of letters by parents responding to the People Power Survey testify to the concerns about basic skills:

> — My 18 year old grandson graduated from high school last spring, he cannot multiply or add as fast as I can -- also he doesn't punctuate his written articles or understand much about paragraphing. He wants to try being a journalist.
>
> — One (of my children) is a marine and can't write and he graduated from high school with honors.
>
> — Too many college grads(uate)s cannot read, write, or do simple arithmetic.

Almost all responding reported that an increase in basic skills must take priority as a task of public education.

Specific vocational training. Many respondents believed that children should receive specific vocational training in skill areas. Respondents report 58% "most important"; 33% "somewhat important", that specific vocational training was an important task of public education. Responses included,

> Perhaps if there was more vocational training there wouldn't be so many drop-outs. Trades should be emphasized.

With high unemployment rates for "unskilled" workers, respondents felt that schools should teach saleable, employable skills to students in addition to more generic curriculums. In the past few years the trend towards students learning vocational skill mastery has been increasing.

Citizenship training. Sixty per cent of those responding to the questionnaire felt that citizenship was a "very important" task of education and 32% believed it was "somewhat important". Many respondents asked what is citizenship training, is it civics, ethical training, patriotism, "God and country?" Parents also asked these questions:

> — What is it, who is responsible for teaching it?
>
> — I don't know what citizenship training is, is it being a good neighbor?

Before we begin an action plan for citizenship training, the components must be better elucidated. Or, perhaps as one parent said, "Good citizenship is a by-product of good education."

Programs for physically handicapped. A high percentage of the respondents, 57% "most important", and 36% "somewhat important", indicated that educational programs should be provided for physically handicapped children. It should be noted that the federal government estimates that as much as 50% of the handicapped student population is either unserved or underserved.

What should be done? What will be the result of implementing the above priorities into the public school system? That they would be viewed as more responsive to community desires and more democratic is obvious. However, it is by no means evident that educational administrators, from superintendents on down, would be open to the changes proposed in the People Power survey. It is helpful to examine briefly other systems which have incorporated some of the same priorities.

New York City Public Schools "decentralized" in the 1960's and now the responsibility and blame for the appalling state of New York's schools is shared by community school boards as well as legislators. The mitigating factor here is the same problem which faces Seattle schools: a crisis of funding. Decentralized community board school districts in New York have not improved the quality of education but they have resulted in a sharp recognition by voters that they can have a more direct say in how their children are being educated. It is now unlikely that they would be willing to return to the former, monolithic, "vertical" structure of administration.

Similarly, the primary and secondary schools of Nazi Germany insured a rigorous, basic education for those students allowed to attend. Basic skills and beyond were taught successfully with a competitive nationalistic zeal. Germany produced the engineers and soldiers demanded of its schools. "Moral and ethical training," what we now recognize as propaganda, was a primary aim as well as "citizenship training." In this, too, the system must be judged a success. The ideology of national socialism was imbued in a generation. Yet the sacrifice of the personal liberty of teachers and students, the selective denial of academic freedom, the crushing of "non-productive" creativity, and the disillusionment of an overeducated but unemployed generation was the other result. The "educationally disadvantaged" were ignored or destroyed.

In a democracy such as ours, the instruction of moral, ethical, and civic issues, if it is to occur within a state educational system, must be discussed in the most open and freewheeling manner possible and there must be a consensus of the voters if the schools are to engage in such instruction.

The thrust of any such curriculum should be to illustrate a plurality of viewpoints, an exposure to a spectrum of ideologies right, left, and center, underscored by the conviction that pupils, with the moral leadership of their parents at home, can judge the philosophies presented them. To not provide this flexibility and variety is to insure that the opposite will take place, as it did in Nazi Germany: partisan indoctrination.

If there is to be an increased emphasis on vocational education, then the community must decide whether it prefers to have this occur during or after high school. If it is to occur during high school then a major restructuring of existing facilities must occur. If it is to occur after high school, then the community college structure must be expanded, or polytechnic (trade) schools, perhaps along the British line, must be set up. What is apparent is an increasing, not to say desperate shortage of craftsmen. If we are not to become a nation dependent on technocrats, then the shoemaker, the plumber, the typesetter, and the chef must remain, be trained, and encouraged.

Such a program must be intimately connected with educational services for the physically handicapped. Many of these jobs can be filled by the physically handicapped and recent breakthroughs in the education of the severely and profoundly handicapped suggest that this population, too, can be trained to do useful, constructive work. We forsee job training programs for all those who do not at the time choose to go to college as an area of tremendous potential growth and of essential importance to a society increasingly overprofessionalized. The recognition of the democratic rights of the handicapped must begin by equipping him or her to become responsible, job-holding citizens.

Democracy cannot long flourish where the citizenry is ignorant in the arts of politics, law, history or even literature. Democracy will fail if citizens fail to learn to read. The failure of the schools to bring these gifts to even one child is a failure that affects us all. This includes those who are poor, do not speak English, are racial minorities or handicapped. It is time for everyone to lend their support to educational services, especially taxpayers.

"FREEDOM AND LEARNING" QUESTIONNAIRE RESULTS - 1,671 Respondents

Question: The most important tasks of public learning are:

Key:
A = Most Important
B = Somewhat Important
C = Not Important
D = Abstain
E = Objection to Item

1. Attention to basic skills:

A	B	C	D	E
93%	5%	1%	1%	1%

2. Citizenship training:

A	B	C	D	E
60%	32%	4%	2%	2%

3. Specific vocational training:

A	B	C	D	E
58%	33%	4%	2%	2%

4. Programs for the physically handicapped:

A	B	C	D	E
57%	36%	3%	2%	3%

5. Programs for the educationally disadvantaged:

A	B	C	D	E
52%	36%	5%	3%	3%

6. Emphasis on moral and ethical development:

A	B	C	D	E
52%	33%	6%	4%	5%

7. Compulsory attendance:

A	B	C	D	E
43%	34%	14%	5%	4%

8. Health care:

A	B	C	D	E
42%	48%	7%	2%	2%

9. Personal goal setting and allocation of time:

A	B	C	D	E
42%	40%	9%	4%	5%

10. Employment of teachers:

A	B	C	D	E
39%	26%	15%	9%	11%

11. Development of capacity to creatively respond to societal problems:

A	B	C	D	E
38%	38%	11%	6%	6%

12. College preparatory curriculum:

A	B	C	D	E
35%	51%	8%	3%	2%

13. Alternatives for dropouts:

A	B	C	D	E
34%	43%	11%	5%	7%

14. Physical education:

A	B	C	D	E
33%	54%	10%	1%	2%

15. Preparation for parenthood:

A	B	C	D	E
29%	46%	13%	5%	6%

16. Multi-cultural programs:

A	B	C	D	E
27%	48%	17%	4%	5%

17. Interpersonal relations training:

A	B	C	D	E
27%	40%	18%	7%	8%

18. Inclusion of people of all ages:

A	B	C	D	E
24%	42%	19%	9%	6%

19. Decision making power of neighborhood school citizens counsel level:

A	B	C	D	E
17%	42%	18%	10%	10%

20. Lunch and breakfast:

A	B	C	D	E
17%	42%	25%	7%	9%

21. Foreign languages:

A	B	C	D	E
14%	61%	20%	3%	2%

22. Balanced racial mix in most schools:

A	B	C	D	E
16%	41%	33%	4%	6%

23. Programs to eliminate sexual stereotyping:

A	B	C	D	E
16%	35%	33%	5%	10%

24. Involvement of students in curricular and administrative decisions:

A	B	C	D	E
14%	42%	25%	6%	13%

25. Advanced communications technology:

A	B	C	D	E
13%	45%	25%	11%	5%

26. Sports:

A	B	C	D	E
7%	62%	24%	3%	4%

Freedom at the Grassroots

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Although it is found nowhere in the Constitution, nor specifically cited in any of our laws, freedom at the grassroots is a freedom cherished by the American people. This paper outlines the issues revolving around grassroots freedom, and asks whether Americans today do in fact enjoy this freedom and what can be done to enhance it. The paper draws on a wide number of examples from recent years in Seattle. There was much evidence of vigor at the grassroots. There was also evidence, however, that only the more affluent are able to exercise this freedom regularly and with success. Finally, the paper identifies the means for cultivating the grassroots, listing both the present strengths or resources available to foster this activity and tentative proposals for future growth, including some proposals for making grassroots freedom more accessible to the poor.

What is freedom at the grassroots? A year of discussion by Seattle citizens, coming together only to discuss this freedom, was silent on definitions. Instead, activities went forward based upon an implicit assumption that no definition was needed: everyone seemed to understand what grassroots freedom involved. Broadly speaking, the public discussion of grassroots freedom focused on freedom to solve one's own problems, by acting upon one's own initiative and by joining with others facing the same problem. People seemed to agree that grassroots freedom is the freedom to come together to discuss and work out common problems; the freedom to exert group pressure on major institutions -- public or private. Grassroots freedoms, then, represented something more than freedom to participate in existing, traditional governmental processes, but also freedom to work together outside the government processes in tackling a problem.

In a sense, this extra-governmental activity might be considered "paragovernmental" coalitions of people seeking political solutions to their problems. These coalitions might dissolve upon success, or be worn down and exhausted by events. They were not necessarily formal; they were rarely expected to be permanent; they were sometimes successful and sometimes not. The year's examination of grassroots activity fixed upon, for example, citizens fighting the "red-lining" of neighborhoods by lending institutions, citizens fighting the big real estate developers, citizens fighting the highway bulldozer, and citizens fighting closure of neighborhood schools. Citizens, little groups of neighbors, were making their voices heard.

A main question to be answered during the bicentennial year was whether citizens of the United States still retained the same freedom at the grassroots that was hoped for in 1776. Such a re-examination is warranted every year, of course, but upon the Bicentennial of a nation, it is most appropriate to devote an entire year to asking this kind of basic question. Looking back at 1976 now, the answer seemed to be "yes". In some cases for some people, however, it was not so positive. Lying beneath this main question, "Do Americans have freedom at the grassroots?" are several questions:

—Do all Americans have this freedom, or is it enjoyed mainly by middle and upper classes?

—Although free, do Americans succeed in their goals when they exercise their "freedom at the grassroots?"

—What can we do to expand this precious freedom?

The People Power bicentennial discussions yielded some interesting answers. First, does freedom at the grassroots exist? A grassroots discussion group — meeting throughout the year — concluded that grassroots activity did exist and did work. This conclusion was supported by a community newspaper poll where 45% of the respondents felt that grassroots activity was moderately or "very successful" in influencing political decision-making. Another 14% were on the fence — feeling it was somewhere between "unsuccessful" and "very successful". A whopping 58% of respondents felt they had considerable access to grassroots activities in their community. Only 12% felt they had no access. 24% felt they had something more than this, but did not rate it "high" or moderately high. (The responses were made by indicating a point on a five-point scale which defined only the extremes of the scale. The results and exact wording of the questionnaire and the responses can be found in the appendix. Only where quotes appear are the precise terms found in the questionnaire.) A substantial number — 44% — felt that grassroots activities "almost always or moderately often spoke to their concerns;" compared to 20% who felt this some of the time, 16% a few times, and 14% "hardly ever." An amazing 74% of the people responding felt that grassroots activity was a "great help" (42%) or a moderate degree of help (32%) to the governmental processes, in contrast to 5% who felt it was a "serious hinderance," 4% who felt it might be more harmful than helpful, and 9% who were on the fence. A full half of the respondents felt that grassroots activity has expanded our freedoms as a people, while only 13% were in the middle and 21% felt there had been little or no expansion. The overwhelming impression gained from the poll was one of general belief in the existence and efficacy of grassroots movements, at least among active newspaper readers.

Further support for a positive outlook can be derived from the numerous examples generated by the discussion and other activities taking place during the year. For example, a televised examination of shelter, featured a community drive against the "red-lining" practiced by lending institutions in the Seattle area. It is generally believed that lending institutions located in inner cities return only a small fraction of the deposits from local residents to the community in the form of loans. It is widely believed that this contributes to decay — to housing decay and to a loss in job opportunities. In contrast, lending institutions in some suburban areas return double or more the deposits of residents, by making more loans to residents than they collect in deposits from the same area. The Central Seattle Community Council Federation spearheaded opposition to this "red-lining." They publicized the practice to the community at large; there were even attempts to dramatize the situation by painting red lines around neighborhoods, and by "green-lining" banks — that is, painting green lines around the banking district. Pledges were collected from individuals who agreed to deposit funds only in banks which would agree to cooperate with the movement. Millions of dollars were pledged. Banks became uneasy; officers began appearing on television and radio to explain their point of view.

Gradually things began to change. A national coalition of community organizations was able to pressure Congress into a new law requiring lending institutions to disclose data revealing where they made their loans. This would permit citizen groups fighting "red-lining" to identify those banks that were doing it and to know which were sympathetic to their cause.

Locally, the mayor organized a Reinvestment Task Force which made some general policy recommendations. Although the task force ultimately split into two factions — lenders and community members — both sides agreed that there should be new policies on lending, and that banks should not make assessments and loans on the basis of race, ethnic or economic composition of neighborhood, or age of neighborhood or quality of schools. Both sides agreed that a 20% vacancy rate be the only general neighborhood factor considered in deciding whether to accept a mortgage in a block, although the "lenders' Final Report" gave lenders more discretion. Both sides agreed to recommend a lenders' review board, controlled by the financial institutions as a self-policing mechanism. They disagreed, however, on the functions of a public review board. Community members sought to give such a board power to review decisions relating to real estate financing "on appeal" from the lenders' review board, and lenders sought to restrict the role of the public board to matters not involving real estate financing complaints.

Sometime later, seven Seattle banks agreed to participate in a program which incorporated some of the joint recommendations. (The task force did not recommend enforcement procedures; and perhaps all the city has power to do here is to shift city deposits to friendly institutions.) In October, one bank (Seattle-First National Bank) announced a decision to commit funds to a "pilot urban target area" and help end "red-lining."

Other local citizen movements which were discussed included:

—a neighborhood effort to block the widening of a bridge over a ravine in Ravenna Park. This project would have drawn considerably more traffic into the area, divided the neighborhood in two, and detracted from the quiet park atmosphere of the area. The neighbors were not only successful in getting the city to reconsider its project to widen the bridge, but also were able to obtain a ban on automobile traffic on an experimental basis for one year.

—a Lake Sammamish group which organized opposition to an expansive private real estate development plan. The developer had planned to apply for a rezoning of the affected lake front area to permit its plans to go forward, but dropped the plans after assessing the strength of the opposition.

—a parent's group which filed suit in court to oppose the closure of certain neighborhood schools. They were successful in winning a preliminary battle and obtaining a court order requiring the schools to open because the school district failed to file an environmental impact statement as required by state law.

A brief look into the recent past would also reveal that this year has not been atypical for Seattle citizens. Within the last five years, Seattleites have fought for and won:

—a public referendum which led to the designation of the Pike Place Public Market as an historic preservation district, thus defeating city bureaucratic plans for a federally subsidized urban renewal district which would have destroyed the original character of the market.

—a halt to the R. H. Thompson freeway which would have cut a wide swath through the Montlake community, and several other residential neighborhoods. Citizens relied on a law suit charging inadequacies under federal laws which required public hearings at various stages of development of the plans and construction of the project.

—a temporary halt to the construction of Interstate 90, which would have cut a wide swath through the Central area, and which now will be built along more modest proportions with a transit lane.

—a defeat of rezoning requests by developers in the Capitol Hill area. One request would have replaced an old private school with an high-cost condominium complex; another would have permitted high rise apartments on one side of Volunteer Park. For the Volunteer Park project citizens not only persuaded the city to refuse the up-zoning request, but actually obtained a down-zoning of the area to make the zoning better "fit" present use.

—the down-zoning of the south slope of Queen Anne Hill by the United South Slope Residents (USSR).

—the blocking of plans for a branch bank on Capitol Hill.

—the designation of many old, and lovely buildings as historic preservation sites, thus helping to preserve the physical links the city maintains with her past.

In all of these examples, city government or a large private institution had plans which would have greatly altered the physical or social environment of the neighborhoods or communities affected. A vast number — usually much more than a simple majority — of residents of the area to be affected (or in the case of the public market, of city residents who used and loved the area) were opposed to these institutional plans. Organized opposition formed and, in these examples, they won complete or partial victories.

Do Americans still enjoy freedom at the grassroots? And does this freedom actually produce tangible benefits for them? The answer, at least for Seattle citizens, seems to be yes.

But have we told the entire story? Is there another point of view? Again, the answer is yes. There is evidence available which reveals that some Americans are excluded from a full enjoyment of freedom at the grassroots. For example, on the newspaper poll, 22% felt that they had no access to the political decision-making process in their community. Only 12% felt decision-making was "highly accessible." (But another 27% felt it to be somewhat accessible; 19% felt they had something more than nothing; and 15% felt they occupied a middle position on this question.)

Possibly those who felt they had no access had simply not attempted to find out what opportunities were available. Some 18% of the respondents were "hardly ever" aware of grassroots activity in their neighborhoods. Possibly, however, they simply lived in neighborhoods which are totally excluded from the processes taking place. Generally, the poll showed that people were more likely to be aware of grassroots activity than they were to rate political decision-making as "highly accessible," so the most logical conclusion is that there is a gap between awareness and ability to have influence.

A specific example of this problem appeared in a show presented on KING-TV. The Third World People in Communications, a group formed by students at the University of Washington, presented a film consisting of a series of interviews of third world people living in Seattle. A man from the International District felt unhappy and helpless about the location of the mammoth King County Domed Stadium in his backyard — a structure radically changing the relatively peaceful and quiet "downtown" streets of the International District where many of the city's lower-income Asian-Americans live. It revealed some unhappiness among Chicanos at the lack of responsiveness of city government to their special problems and it showed young Indians explaining why Indians do not participate in decisions affecting them except in tribal politics. The rest of the world simply did not include them.

On a hopeful note, the individual Blacks interviewed seemed relatively confident of their political roles, but they may not have been representative of poor Blacks.

And the "red-lining?" True, the citizens' movement seems to be making some progress. However, the Seattle Sun (April 16, 1976), was of the view that

> It was only after the middle-class, rediscovering the central cities, began to discover how tough it was to get home mortgages and other loans that the issue began to heat up.

It is true that community councils which joined in a combined effort to bring pressure on the lending institutions included councils that represented the poorest of Seattle, but it is also true that some of the councils represented areas where there were affluent citizens — lawyers, business people, white collar workers.

As for the school closures, due to a judge's decision, all five closed schools were ordered reopened. Only two of the affected neighborhoods, however, were represented in the law suit. It may be that the other neighborhoods simply did not care if their schools closed, but it may also be that they lacked free contacts with lawyers and professional people and the advice which would possibly have led them to conclude that a court action would be worth the effort.

The citizen movements that successfully opposed large real estate developments were generally composed of more affluent citizens. The Lake Sammamish residents or the Ravenna Park residents, for example, live comfortably in spacious lovely single-family homes. They are low-density neighborhoods and the residents have been successful so far in keeping them that way.

One might observe that the now dead R. H. Thompson Expressway would have cut through Montlake which, although not the most posh area of town, is certainly better off than the Central Area where I-90 will still go through — although with only eight lanes instead of ten.

This is not to say that the poor do not mount grassroots efforts. The Central Area Community Council did spearhead the drive against "red-lining." The endurance of the National Welfare Rights Organization (NWRO) as a lobby group attests to the organizational ability of the poor. The community campaign to stop I-90 and the community campaign to demolish Greenwood Gardens are grassroots movements arising in moderate to low-income neighborhoods. The success rate of the poor in fighting established governmental agencies may be discouraging when compared to the success rate of more affluent neighborhoods.

There may be other limits on freedom at the grassroots as well. In all of the numerous examples of successful citizens' movements from this year, as well as the examples from the recent past, there was only one instance in which the citizens' movement led to a national response. A national coalition of neighborhood organizations, joined by a local neighborhood organization, fought to bring the "red-lining" problem to the attention of the United States Congress and successfully secured national legislation requiring lending institutions to reveal important financial data and the extent to which they were in fact "red-lining" city neighborhoods.

One other example involved a federal law. The highway act which requires public hearings at various stages of development was invoked in federal court by citizens seeking to limit highway construction. All of the other examples listed involved obtaining or vetoing some decision or expected decision of a local governing body — usually a city council.

This tendency for grassroots activity to focus on the local level may be due to the nature of the problem — as each issue is tied to a unique locality — or it may be that local governments are more responsive to these problems. It may also be that local issues facilitate the forming of an united front while national issues, which are often more complex, produce splinter groups. On the other hand, if there are a multitude of local issues all very similar in nature, it is possible that local groups will in the future form national coalitions. There is some evidence of this already, especially among groups concerned about the environment.

Some local issues repeat themselves throughout the nation, however. The "red-lining" problem produced ample evidence that inner city communities throughout the nation were suffering from the same problem. The building of highways, real estate developments, urban renewal, school closures — are all issues that plague neighborhoods everywhere.

In many cases, the federal government was very much a part of the problem, but the solution usually appeared at a local level. It seems more likely therefore, that local governments are more responsive to these types of problems.

It is interesting to note, in this context, that people who responded to the poll conducted under the auspices of the People Power's grassroots discussion group had much more confidence in the political process at the local level. 39% had a high or moderate degree of confidence in local government while only 18% had confidence in state government, and a mere 11% had confidence in the national government. Also, in response to the question "In what area do you feel grassroots activity is most effective?" 15% designated their immediate neighborhoods; 26% the community; 17% the city; 9% the state; and 1% the national government. Grassroots freedom, beyond the local level, then, seems to be difficult to achieve -- at least under present conditions.

Cultivating the Grassroots

A final important issue raised during the discussions of this past year focused on methods of fostering grassroots activities, not just for those who are now engaged, but also for those who are not. What are the resources presently available to support this activity? How can they be enhanced?

An examination of the specific examples of successful grassroots activity, as outlined above, reveals a number of important legal tools which facilitated success. The availability of the referenda, for example, saved the Pike Place Public Market from the urban renewal bulldozer. The State Environmental Protection Act (SEPA), which requires a careful examination of the impact on the environment before a major project can be undertaken by the government, was instrumental in the court order to reopen five schools. Citizens were able to limit highway construction in cases where the federal highway act, which requires public hearings, had been violated; after the required hearings were held and citizen comment taken, the projects were permanently stopped or reduced in scope. The National Environmental Policy Act (NEPA) also figured in, to some extent, in the highway cases. In many cases, the nearness of a local government unit with some power to bring about a result -- such as a rezoning -- made it possible for organizations to bring pressure to bear.

A federal law requiring new banks or new branch banks to, among other things, serve "the convenience and needs of the community" was cited with devastating effect by Seattle's Capitol Hill residents blocking a branch office of the Pacific National Bank. These residents also artfully used public hearing requirements to present their case to the agency. In the face of this opposition, the bank withdrew its application for a branch bank permit.

Although they were not instrumental in the particular examples examined, a number of other legal tools are also available to make it easier for ordinary people to influence decisions which will affect them. For example, the state has an open meetings law which requires that official decision-making take place in meetings open to the public, except for a few limited decisions involving personnel, the purchase or sale of property and similar activities where closed doors may sometimes be justified. Both the state and national government have freedom of information laws which permit any citizen to secure information in the files of government agencies. Again there are exceptions to protect the privacy of individuals, to protect ongoing litigation by government, trade secrets, military data, and so forth.

The Seattle Office of Policy Planning was created by ordinance which mandated that it make one of its goals "facilitating citizen participation in the City's decision-making process to secure compliance with federal and other requirements." This too, probably helps as a psychological device, but it is too vague to have any specific usefulness.

Another important resource contributing to effective grassroots movement is a sympathetic staff in critical governmental agencies. A staff which feels it important to secure citizen participation in agency decisions may be worth far more than a statutory requirement that it take place. One might note the processes followed by the City of Seattle, when the federal government consolidated a large number of grants (e.g., urban renewal, model cities) into a single community development block grant. Although citizen participation was required in only general terms, and HUD regulations did not ask for much, the city's Office of Policy Planning held a series of public hearings before the City Council as well as in the neighborhoods likely to be affected. In some cases 200 or more citizens attended these meetings. Those who cared could take part in the early planning stages — the formative stages — of the new program, and they did.

A citizens group is particularly fortunate if it deals with a staff that will support the citizens in technical ways, by providing access to information, decision makers and resources, even where the staff disagrees with the citizens or the substantive issue at hand.

Outside of the governmental sphere many private institutions also figure prominently in fostering successful grassroots activity. Community councils, churches, and other community based organizations are essential as permanent organizations which can quickly mobilize members when a problem arises. Frequently, those interviewed on their community activities felt that this kind of organizational network would be short-lived; that it would either win a victory and disband, or would be worn down and finally defeated.

Where a strong community council exists, and activity waxes and wanes, the organization seems to endure. Coalitions of such permanent local groups also seem to be extraordinarily important, especially where the problem extends beyond the boundaries of the communities -- such as the case with "red-lining." A city-wide coalition and a national coalition of grassroots organizations were instrumental in that fight. Grassroots freedom may in part depend on an individual's willingness to support a community council and the council's willingness to join a coalition.

To cite some specific examples, national groups such as the National Training and Information Center in Chicago, Illinois, have already issued a pamphlet entitled "How to Use the Home Mortgage Disclosure Act of 1975." This is one in a series of pamphlets designed to aid community activists by equipping them with information on laws and techniques needed to succeed in a grassroots battle on a particular issue.

Locally, the Central Area Motivation Program (CAMP) has organized a Consumer Action Project, which among other things, provides information on the legal rights of citizens against landlords, large financial institutions, and the like. The role of the Central Area Community Council has already been mentioned. Untapped resources may possibly be found in the free legal services organizations such as Legal Services or ACLU, although these are limited to certain types of problems or clientele. The media are also potent grassroots resources, particularly through consumer programs such as Action Northwest on KING-TV and the Action columns in the newspapers.

Community newspapers are also important. On the poll, it was found that around 16% of those responding indicated that they normally relied on community papers for information about grassroots activity. The only other substantial source of such information was the larger daily papers (20% of all those answering the questionnaire). Word of mouth, radio, and television were the main sources of information for 16% of the population. (43% of respondents abstained from answering this question.)

This reliance on community newspapers is quite interesting, considering that most of them are not much more than advertising packages which include a small amount of news. Yet they focus on the community — the level where grassroots activity is likely to be more effective. One of the strengths of grassroots freedom in Seattle, then, is in the side availability of inner-city, community-level newspapers that are willing and able to carry news about the community to the community.

In the light of evidence that freedom at the grassroots does not extend to all, and does not always meet expectations, we must ask if there is more to be done to enhance this freedom. It is time for a dialogue between the people and the officials of government which will focus on some specific questions about grassroots freedom.

1. How to enhance the role of the community?

The importance of the community as the chief arena for grassroots activity is obvious. Twenty-six percent of the poll respondents felt it to be more effective at this level; compared to 17% who chose the city; 15% the neighborhood; 9% the state; and only 1% the national government. What then can be done to enhance the role of the community in solving the important problems facing the community? A suggestion often made in this regard is for the establishment of community-level government, or at least official recognition of existing community councils. A debate on this point must also take into account the fact that the Seattle Federation of Community Councils has opposed this idea in a white paper in which it declares its independence from government to be an important element in the effective functioning of the councils.

2. How to extend grassroots democracy to those who do not enjoy it now?

Is it possible that those who are not active in political affairs are passive because that is the way they want to be? Or has the political process excluded them against their will?

If the former, should there be any effort on anyone's part to persuade them to become involved, or is it a greater freedom to be left alone? If the isolation of the non-participants is against their will, then certainly something should be done, but what?

Is it possible that the values sought through grassroots activities are so well beyond basic survival needs that only the affluent can participate? If so, is it time for everyone poor and non-poor alike to make a commitment to relieving the food and housing problems of the poor?

Are there styles of participation that are more congenial to poor people? Are there ways of enhancing the success rate of grassroots campaigns mounted by the poor? An intense effort is still needed to understand the dynamics of grassroots participation by under-privileged peoples, and to make that effort easier.

3. Restructuring Government

Reforms in the basic structure of government are always possible at the local or national level. Constitutional and charter reforms take place periodically. During these re-examinations of basic ground rules for public action, it is important to consider ways in which the government may be made more responsive and open to the citizenry.

The freeholders of the City of Seattle considered such possibilities and some of their options are listed in the appendix. The response of the community to these ideas, based on a community poll, seems favorable (see the appendix to this paper), yet the draft charter the freeholders finally presented to Seattle citizens in late 1975 was voted down.

Other suggestions for reshaping the local governmental structure can be found in the recommendations of "Seattle 2000" -- an ad hoc organization that came together in 1973 on an "anyone's invited" basis to prepare goals for Seattle in the year 2000. Throughout the recommendations put forth by separate task forces, general recommendations for increased citizen participation abounded. How this was to be done was not always clear, but a few specific recommendations were made:

--"Complexity of government is contrary to democratic rule. The effective powers of government should not be fragmented and eroded. . . . The city shall therefore interpose no new levels of government."

—The final report also recommended "a policy of local community meetings in interested communities on issues affecting those communities."

—There were suggestions that certain records be stored on a decentralized basis in community centers throughout the city.

4. Government by Perpetual Polling

Still another device that has been suggested as a way to increase participation in political decision-making is through adaptation of television and telephone networks to permit computerized polling. Thus, "instant referenda" are possible. But, one might wonder whether there is not a certain wisdom in the existing referendum process -- which requires a considerable body of citizen support before an issue can be taken to the polls, and which imposes a relatively lengthy time frame in which opponents and proponents can mount a campaign and all citizens can study the issues.

This so-called "electronic participation" has all the limitations of any opinion poll in its ability to elicit profound responses. (An example of guidance by public opinion may be found in the Nixon administration, which followed the polls carefully, but which became more aloof from the people than any other presidency.) On the other hand, the use of polling methods, sophisticated or not, promises to involve a large number of people at relatively low cost. Is this type of participation of any value, or is it too shallow to warrant even a minimal expense to make it available?

5. Expanding Access

Much might be done to make it easier for citizens to meet with one another and to learn about and attend meetings held by government officials. Public meetings should be well publicized, well in advance of the meeting date.

Is it possible, at least on an experimental basis, to try using community papers and bulletin boards to notify citizens of public meetings? Is it possible to permit government employees to vary their work hours, so that they might hold and attend meetings after five p.m.? Is it possible to arrange for specially scheduled buses on community meeting nights? For example, bus routes sometimes travel only north or south, while people may desire to move east or west to local community meetings. Can we experiment with these devices to expand access to grassroots freedoms for citizens?

6. Development of Participants' Know-how

Another method of fostering grassroots activities would take the simple form of dissemination of information: courses in how to use existing statutory and constitutional aids to citizens seeking to have political impact.

Ways need to be explored to provide such information to the leaders of less affluent neighborhoods, so that they can be as knowledgeable and effective as the leaders of affluent neighborhoods where lawyers, administrators, and other professionals abound. Encouragement of leadership among the poor would also involve incidental supports for the immediate costs of grassroots participation: child care and transportation allowances during training and at public meetings.

An important tool to assisting citizens might be the development of a primer that explains the rights of citizens when dealing with agencies. It could provide a summary of the laws that are listed here as resources, as well as citations to these laws and an explanation of how to find the entire text; as well as some simple advice on how to use these laws effectively. The inclusion of names, addresses and telephone numbers, and a summary of the activities of resource organizations of the type described above would be useful. This manual, if developed, could become an invaluable aid to citizens seeking to veto a project initiated by public or private agencies or to initiate a project which is genuinely citizen-based.

7. Developing New Resources

How can we create a right to participate at the grassroots level? That is, how can participation become enforceable? Would it help to create an office of community ombudsman or a peoples' legal service? Would these officials be able to assist citizens and provide sound legal advice, or would they be too much a part of the system that is already working against the community?

This has been a brief summary of People Power's one year discussion of freedom at the grassroots, and an outline of issues to be examined in the future. It is a summary of democracy at work, for grassroots is the essence of democracy. This brief recount provides a basis for hope and pride, for there are countless examples of citizens confronting the plans of institutional professionals and making important changes. It also reveals some flaws in the system -- areas where citizens are not yet heard. This is where more work needs to be done.

To the extent that Americans seem to be more devoted to the American democratic heritage at some points in history, and not others, it is possible that at some times they have been conscious of creating and changing their government, while at other points it is taken for granted. In the 1960's and 1970's the reshaping of basic democratic principles has been all too often left to committees within the bureaucracies of government -- to the professionals. The process established by organizations such as People Power is an exception to this. The goal now is to involve as many citizens as possible in a discussion of these basic issues, and to then reaffirm the general principles on which this government is founded, or to enact new laws embodying new principles. The task is at hand.

Editor's note:
Professor Lines is pursuing the possibility of developing a grassroots primer such as the one mentioned in the text -- an idea originating with the People Power task forces.

APPENDIX

"FREEDOM AT THE GRASSROOTS" QUESTIONNAIRE -- 295 Respondents

1. HOW MUCH CONFIDENCE DO YOU HAVE IN THE POLITICAL PROCESS AT THE LOCAL LEVEL?

13%	no confidence
26%	
19%	
33%	
6%	high confidence
1%	abstain
2%	objection

2. HOW MUCH CONFIDENCE DO YOU HAVE IN THE POLITICAL PROCESS AT THE STATE LEVEL?

26%	no confidence
35%	
18%	
16%	
2%	high confidence
1%	abstain
2%	objection

3. HOW MUCH CONFIDENCE TO YOU HAVE IN THE POLITICAL PROCESSES AT THE NATIONAL LEVEL?

36%	no confidence
35%	
16%	
9%	
2%	high confidence
1%	abstain
2%	objection

4. HOW MUCH ACCESS DO YOU HAVE TO THE POLITICAL DECISION-MAKING PROCESS IN YOUR COMMUNITY?

22%	no access
19%	
15%	
27%	
12%	highly accessible
2%	abstain
3%	objection

5. HOW SUCCESSFUL DO YOU THINK GRASSROOTS ACTIVITY IS IN INFLUENCING POLITICAL DECISION-MAKING?

17%	unsuccessful
18%	
14%	
32%	
13%	very successful
3%	abstain
4%	objection

6. DO YOU BELIEVE GRASSROOTS ACTIVITY IS A HINDRANCE OR A HELP TO GOVERNMENTAL PROCESS(ES)?

5%	serious hindrance
4%	
9%	
32%	
42%	great help
4%	abstain
5%	objection

7. HOW OFTEN ARE YOU AWARE OF GRASSROOTS ACTIVITY IN YOUR NEIGHBORHOOD OR COMMUNITY?

17%	hardly ever
18%	
10%	
30%	
23%	almost always
0%	abstain
3%	objection

8. DO YOU FEEL YOU HAVE ACCESS TO THE GRASSROOTS ACTIVITIES IN YOUR COMMUNITY?

12%	no access
13%	
11%	
31%	
27%	high access
4%	abstain
3%	objection

9. TO WHAT EXTENT HAVE GRASSROOTS ACTIVITIES SPOKEN TO YOUR CONCERNS?

14%	hardly ever
16%	
20%	
32%	
12%	almost always
3%	abstain
3%	objection

10. THE STATE PUBLIC DISCLOSURE LAW (INITIATIVE 276) IS THE RESULT OF A SUCCESSFUL GRASSROOTS MOVEMENT. WHAT IS YOUR OPINION OF ITS EFFECTIVENESS?

9%	not effective
13%	
13%	
30%	
25%	very effective
4%	abstain
5%	objection

11. CURRENTLY THERE IS GRASSROOTS ACTIVITY FOCUSING ON ALLEGED "RED-LINING" PRACTICES OF BANKS AND SAVINGS AND LOAN INSTITUTIONS. TO WHAT EXTENT ARE YOU AWARE OF THIS ACTIVITY?

12%	no awareness
8%	
12%	
29%	
34%	great awareness
1%	abstain
4%	objection

12. TO WHAT EXTENT HAS GRASSROOTS ACTIVITY EXPANDED OUR FREEDOMS AS A PEOPLE?

9%	no expansion
13%	
13%	
29%	
21%	great expansion
6%	abstain
8%	objection

13. IN WHAT AREA DO YOU FEEL GRASSROOTS ACTIVITY IS MOST EFFECTIVE?

15%	immediate neighborhood
26%	community
17%	city
9%	state
1%	national
23%	abstain
9%	objection

14. WHAT IS YOUR NORMAL SOURCE OF INFORMATION ABOUT GRASSROOTS ACTIVITY?

4%	television
4%	radio
8%	word of mouth
20%	daily papers
16%	community papers
43%	abstain
4%	objection

Zeitgeist analysis of Freeholder questionnaire, for People Power, February 9, 1975 -- 147 respondents

1. THE FREEHOLDERS ARE CONSIDERING THE PROPOSITION THAT THE MAYOR AS THE CHIEF CITY ADMINISTRATOR SHOULD BE ULTIMATELY RESPONSIBLE FOR CITY GOVERNMENT. BASED ON THIS PRINCIPLE THE FREEHOLDERS ARE CONSIDERING ALLOWING THE MAYOR MORE LATITUDE IN HIRING AND FIRING DEPARTMENT HEADS.

28%	strongly agreed
27%	
3%	
20%	
21%	strongly disagreed
1%	abstained

2. THE FREEHOLDERS ARE ATTEMPTING TO INCREASE THE FLEXIBILITY OF CITY ADMINISTRATION BY NOT DESIGNATING SPECIFIC DEPARTMENTS IN THE CHARTER (E.G., POLICE). THEY ARE CONSIDERING ALLOWING THE MAYOR TO ORGANIZE THE EXECUTIVE BRANCH AS NEEDED WITH CITY COUNCIL APPROVAL.

26%	strongly agreed
35%	
3%	
14%	
18%	strongly disagreed
3%	abstained

3. THE FREEHOLDERS HAVE BASED MOST OF THEIR DELIBERATIONS ON THE PRINCIPLE OF "OPEN GOVERNMENT." CONSISTENT WITH THE APPROACH SOME HAVE URGED THAT CITIZEN PARTICIPATION AT ALL LEVELS OF MUNICIPAL GOVERNMENT BE A STATED PRINCIPLE IN THE NEW CHARTER.

41%	strongly agreed
27%	
13%	
10%	
6%	strongly disagreed
3%	abstained

4. THE FREEHOLDERS ARE CONSIDERING THE MECHANISM OF "MINI-INITIATIVE" WHEREBY CONCERNED CITIZENS CAN HAVE THE CITY COUNCIL HOLD A PUBLIC HEARING OF PROPOSED ORDINANCES WHEN THE ORDINANCES ARE SUPPORTED BY A CERTAIN NUMBER OF SIGNATURES FROM REGISTERED VOTERS.

37%	strongly agreed
40%	
10%	
5%	
5%	strongly disagreed
3%	abstained

5. IN ATTEMPTING TO STRENGTHEN THE CITY COUNCIL'S POLICYMAKING POWERS THE FREEHOLDERS ARE CONSIDERING GIVING THE COUNCIL RESPONSIBILITY FOR SETTING THE BUDGET POLICIES WHICH THE EXECUTIVE BRANCH MUST THEN FOLLOW. THE FREEHOLDERS ARE NOW PLANNING TO GIVE THE COUNCIL AN AUDITOR WHO CAN MONITOR THE EXECUTIVE BRANCH'S PERFORMANCE IN MEETING BUDGET PRIORITIES.

44%	strongly agreed
34%	
7%	
4%	
6%	strongly disagreed
5%	abstained

6. IN ORDER TO MAKE CITY GOVERNMENT MORE RESPONSIVE TO THE NEEDS OF THE CITIZENS THE FREEHOLDERS ARE CONSIDERING GIVING THE OFFICE OF OMBUDSMAN INVESTIGATIVE POWERS INTO ELECTIVE OFFICES, A POWER IT DOES NOT NOW HAVE.

50%	strongly agreed
27%	
3%	
6%	
9%	strongly disagreed
5%	abstained

7. SEVERAL METHODS BY WHICH NEIGHBORHOODS WOULD RECEIVE MORE REPRESENTATION IN CITY GOVERNMENT HAVE BEEN CONSIDERED BY THE FREEHOLDERS. ONE OF THESE IS THE CONCEPT OF "NEIGHBORHOOD SELF-GOVERNMENT UNIT" BY WHICH VARIOUS CITY NEIGHBORHOODS, THROUGH AN ELECTED NEIGHBORHOOD COUNCIL, ARE GIVEN A CERTAIN AMOUNT OF AUTONOMY IN DETERMINING ZONING AND OTHER LOCAL LAND USE MATTERS.

28%	strongly agreed
28%	
12%	
10%	
16%	strongly disagreed
5%	abstained

8. THE FREEHOLDERS ARE ATTEMPTING TO CLEARLY DEFINE THE RESPONSIBILITIES OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF MUNICIPAL GOVERNMENT. THIS PROCESS HAS LED THEM TO CONSIDER STRENGTHENING EXECUTIVE BRANCH'S ADMINISTRATIVE ROLE AND THE CITY COUNCIL'S POLICY MAKING ROLE.

38%	strongly agreed
33%	
5%	
6%	
10%	strongly disagreed
7%	abstained

Freedom and Technology:
People Power's Participation in the Seattle Energy 1990 Study

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People Power and its member organizations played an important role in one of Seattle's largest policy decisions in recent history. During the fall of 1975 and the spring of 1976, the City of Seattle was trying to establish an energy policy to carry the city through 1990. The decision would have financial implications in excess of $450 million in capital and operating costs affecting the economy, lifestyle and the environment of the city and its citizens.

After eleven months of meetings, thousands of pages of studies, and countless hours spent by interested citizens, the Seattle City Council decided to adopt an energy policy that opted for reliance on conservation, and expansion of hydroelectric facilities instead of a continued nuclear plant construction program. This decision represents a major break in standard electrical utility planning. Seattle is the first major city in the United States to decide to meet future energy growth by using the energy we have now more efficiently.

The process used by the city to arrive at this decision is almost as important as the decision itself. Seattle was facing an extremely complicated issue, involving a new, highly sophisticated computer economic modeling technique; complex nuclear and mechanical engineering and a myriad of sciences involved in assessing environmental and social impacts. Yet, throughout the entire process, Seattle City Light and the City Council provided access for citizens who were interested in the decision.

The Energy 1990 process may provide an important model for future government actions that involve complex scientific and technical issues. The involvement of the People Power Coalition in Energy 1990 also provides an excellent example of the possibilities for citizen involvement when there is an organization to provide information and coordinate activities.

The Energy 1990 process got started in the spring of 1975, when Seattle City Light requested permission from the City Council to purchase an option for 10% of the power from two nuclear power plants that were being built by the Washington Public Power Supply System (WPPSS), a consortium of public utilities in the state.

Energy planners at City Light had carefully examined historical growth rates in electricity and made judgements about the future rate of growth for the Seattle City Light service area. In the past, as the utility needed additional power, new dams were built by Seattle City Light, or the utility would contract for power from the federally financed dams along the Columbia River. Hydroelectric power plants provide very cheap electricity — about one tenth the cost of nuclear power plants. As the major dam projects came on line, it was in the public interest to promote the use of electricity. The more electricity we used, the lower the unit price to the customer.

Those were the "good old days." Now, there are very few sites left for the construction of dams and new demands for electricity in the region will probably have to be met by building thermal electric plants. Whether these plants use coal or nuclear power, the cost of electricity is going to go up. One study indicates that between now and 1985 the cost of electricity in the Northwest is going to double — and that doesn't include inflation. Many experts believe that the increasing cost of energy will slow the growth rate for electricity in the future.

The Seattle City Council recognized that it was facing a new ball game in electrical energy policy. The council instructed Seattle City Light to conduct a detailed study to assess the most likely growth rate for the city between 1975 and 1990; to identify all of the alternatives for meeting that growth rate; and to assess the social, economic, and environmental impacts of any power plant development.

During the summer of 1975, Seattle City Light established a citizen's overview committee to assist the utility in selecting an independent consultant for the Energy 1990 Study, and to monitor the study process. Thirty citizens were selected for the Citizen's Overview Committee. These people represented most of the segments of the Seattle community. The committee included two economists, several attorneys and University of Washington faculty members with expertise in nuclear engineering and conservation technology.

People Power first got involved in the Energy 1990 Study when three of its member organizations (the Institute for Environmental Studies at the University of Washington, KING-TV, and KZAM radio) decided to publicize the key public issues. It was clear that a new energy policy would significantly affect all groups in the city. The study was moving quickly; if the general public was not involved at every step, it would be hard for them to catch up.

The Institute for Environmental Studies' Energy Information Project was set up in 1975 to provide objective information on energy issues to the public. Drawing on the research resources of the University of Washington, the Institute for Environmental Studies worked with KING-TV to prepare a series of public service announcements that dealt with the options being raised by Energy 1990 and the importance of the decision to residents of the city. KZAM radio began a series of in depth reports on the process. The project also organized a number of both formal and informal background briefings for members of the Seattle press to help them wade through the 2,000 page study.

In December, a People Power task force of community people interested in the issue of freedom and technology met to discuss a list of priorities for the coalition activities in the month of February and decided to concentrate on the Energy 1990 Study.

The first step was to expand the task group. Members of the Citizen's Overview Committee and Seattle City Light staff were invited to join the People Power task force to help in the development of a television script for KING-TV and other informational material. These resource people were invaluable to the task force throughout the entire process. After expanding the group, the task force focused most of its initial activities on publicizing the draft Environmental Impact Study (EIS) being prepared by Seattle City Light. Citizens had a limited amount of time to respond to the contents of the study and written comments were considered by Seattle City Light in the preparation of the final report to the City Council. The publication of the draft EIS was the first step in the public hearing schedule for the Energy 1990 process.

The task force also worked with Seattle City Light to draw attention to a questionnaire on Energy 1990 that was to be mailed to all customers with the utility bills. However, that questionnaire did not go into very much detail regarding the various options facing the city, so the task force decided to prepare its own questionnaire. The questionnaire was written by the People Power staff with assistance from resource people at the U. of W. and the Citizen Overview Committee and advice from the City Council, Seattle City Light and the People Power task force.

The questionnaire and a schedule of all of the public hearings and City Council meetings planned for Energy 1990 were mailed to the member organizations of People Power during the month of February and the questionnaire was published in a Sunday edition of the Seattle Post-Intelligencer (circulation: 249,000). It was also mailed to 20,000 teachers and students in the Seattle School District.

The questionnaire was timed to coincide with other People Power media activities. KZAM and KING-TV aired a series of reports on the study and KING-TV also produced a public affairs documentary that identified the various economic, social and environmental impacts of the various options under consideration by Seattle City Light and detailed methods for citizens to get involved in the decision making process. It was also re-broadcast on KCTS, the PBS station in Seattle. The Seattle Sun also published several articles on the Energy 1990 issue. The People Power task force members were valuable resources in the preparation of all the media coverage listed above.

During February, March and April of 1976 four city-wide organizations affiliated with People Power were actively involved in the Energy 1990 process.

Metrocenter at the downtown YMCA sponsored a series of brown bag lunches for people to learn more about the issue. Speakers discussed the regional energy situation and how it related to Seattle's energy decision; the safety of nuclear power plants, and other energy technologies; the potentials for energy conservation in the City of Seattle and methods for citizen involvement in the decision making process. The Seattle Public Library sponsored a public forum on Energy 1990. Members of the Citizen's Overview Committee made presentations and answered questions from the audience. The Church Council of Greater Seattle sponsored a day long conference on "The Nuclear Option: Its Moral and Ethical Implication." The conference speakers discussed the energy alternatives available to this region; a debate on the technical and safety issues associated with nuclear power was staged; and a theologian, a representative of the Coalition for Safe Energy and a proponent of nuclear energy discussed the ethical and moral implications of this technology.

At the end of this conference the Church Council adopted a position on Seattle's energy policy. The council resolved "that the Seattle City Council be requested to defer plans for participating in WPPSS plants 4 and 5" and to "take prompt action to implement the more feasible energy conservation proposals of the Energy 1990 Study and to work toward removal of institutional and economic disincentives to more efficient utilization of energy." The Church Council in its resolution affirmed mankind's obligation to exercise stewardship in the use of the earth's resources, especially non-renewable resources, to promote justice and equity in their distribution and to consider the effect of our actions on future generations.

The Municipal League also conducted a study of Energy 1990 and developed a Public Forum to allow some of the principals involved in these issues to debate. A major benefit of the league study was the opportunity for the various parties involved in these issues to confront one another with their varying perspectives. In response to the draft EIS, the Municipal League submitted 23 questions to Seattle City Light. Following several more months of study the Municipal League presented the conclusions of their report to the Seattle City Council.

> "The League concluded that the combination of increasing hydroelectric development, getting more 'mileage' out of existing levels of energy through effective conservation programs, and working for only a small portion of Seattle's rightful share of the reallocation of industrial power from the Bonneville Power Administration, would provide an adequate supply of energy at the lowest possible cost. Any one of these options could conceivably make up the deficit by itself.
>
> Nuclear energy is an option, but the League considers it simply too expensive to pursue until all of the low-cost options have been fully developed."

In addition to these major efforts by city-wide organizations, a number of study groups, organized by churches and

and community organizations, met to discuss Energy 1990. People Power distributed recordings of the KZAM radio program, copies of the questionnaire, and suggested discussion topics to these groups.

There are numerous individuals and groups in Seattle that are both deeply concerned about conservation and are ready to devote significant organizational resources to promoting conservation. This was demonstrated in the responses People Power received to the People Power Energy 1990 questionnaire. The questionnaire presented specific conservation strategies for the respondents to consider, and then asked if they would support conservation as an alternative to new generation facilities. All gave strong support to conservation approaches and favored conservation over all generation strategies. For example: 76% supported conservation features required by law for all new construction; 71% supported special conservation rates or discounts for homes and businesses that significantly reduced consumption; 73% endorsed an inverted rate structure; and 58% said they would like to see City Light lease energy efficient equipment.

When asked to rank the seven generation and non-generation strategies for Seattle's future electrical needs, 70% supported the development of a "strong" or "all out" conservation program, and to delay decisions on new power plants until the effectiveness of such conservation approaches is determined.

One of the most unusual aspects of the Energy 1990 questionnaire was the intensity of response which it aroused. Of the 1,671 people who returned the questionnaire over 50% added personal comments and suggestions. Unexpectedly, the focus of the individual statements was not on the immediate use or misuse of nuclear power. Rather, the overwhelming emphasis was on the need for research and development of long range non-fossil, non-nuclear energy sources, as well as more effective conservation measures at present. Of the people who added comments, almost 50% made specific reference to the development of alternate energy sources.

The greatest center of interest was in the use of solar, wind, geo-thermal and other naturally provided energy forces. Forty-nine percent of those commenting urged the development of solar energy and 22% wanted more research into wind power.

Somewhat disturbing, although we made no statistical count, were the number of statements which reflected skepticism as to the effect of the people's desires on the development of

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the city's energy policy. Typical comments were of the nature: "City Light doesn't care, anyway. We could go solar but the big power companies don't own the sun."

The complete results of the People Power questionnaire, along with a summary were delivered to members of the Seattle City Council. (See the appendix to this article.) Throughout the entire process, People Power informed member organizations about changes in the City Council's schedule, and disseminated new information as it was developed by Seattle City Light and the consultants. Because of this service, People Power was recognized as a place where citizens could get useful information about a very complex issue.

It is almost impossible to document specifically the effects of People Power in the public involvement phase of the Energy 1990 process. Many other organizations were also involved during the 14 months of study. We do know that a very large number of citizens were involved in this decision. (The volume containing comments from citizens to the draft EIS is about the size of the Seattle phone book, at the City Council public hearings 110 people testified, and several members of the City Council commented that a large number of people had called or sent letters.) All of this lead to the July 1976 decision by the Seattle City Council not to participate in the two energy plants, opting instead to implement an aggressive energy conservation program. This is the first time a major U.S. city has adopted a consumer oriented energy policy.

There were several important elements to the Energy 1990 success:

1. New reliable information was being generated by the city, U. of W., members of the Citizen's Overview Committee and the People Power task force (in some cases the latter two were overlapping). People Power provided a real service as a conduit of information.

2. The issue was identifiable to many because it affected everyone's electricity bill. It has been estimated, as this paper brought out in the introduction, that electricity bills in the Northwest will double by 1985.

3. The key issue in Energy 1990 was a choice between more central power generation or a movement to change the responsibility of the public utilities to include consideration of nongeneration options such as conservation and solar home heating.

During the past three years there has been a great deal of information about conservation. A recent electrical energy conservation study prepared for the Bonneville Power Administration found that conservation can provide needed power to the Northwest at one-sixth the cost of thermal energy, thus People Power was able to build on other public education efforts.

4. There were citizens who were members of the task forces who knew a great deal about the issues; expertise that was invaluable in anticipating events and identifying key issues. The People Power activities were focused around deadlines and real issues.

5. There was a momentum in the community with a number of other groups involved. People Power played a major role in sustaining that momentum.

The methods used to encourage and facilitate public involvement in Seattle's Energy 1990 process may provide a valuable model for dealing with other technical and scientific public policy issues.

Elected officials are increasingly confronted with decisions on matters involving complex technical and scientific factors. At the same time there is growing pressure for public participation in these important decisions. Clearly, new techniques are needed to improve the capability of citizens to make a meaningful contribution to the decision-making process.

People Power's efforts focused on the critical first step: creating public awareness. By providing objective information, delineating the key issues and identifying the implications of those issues for the general public, People Power made it easier for citizens to get involved. During the City Council hearings, People Power served as an information clearinghouse updating the schedule of Council meetings.

Other factors also contributed to the success of the process. Seattle City Light hired independent consultants to prepare the Energy 1990 study and established a distinguished Citizens Overview Committee to monitor the work of the consultants and the utility. In addition, the City Council spent about 90 hours on public discussions with consultants, utility staffers, invited energy experts and the general public before making a decision.

Energy 1990 produced needed policy direction for Seattle because each of the essential parts of a democratic system were functioning well: an informed citizenry, responsible officials, thorough information, and capable elected representatives. Citizen participation played a vital force in keeping the study objective.

As a national energy policy is developed, local efforts can help citizens shape federal programs to local circumstances. Others around the country must find their own answers, but much can be learned from Seattle's experience with Energy 1990.

"FREEDOM AND TECHNOLOGY" QUESTIONNAIRE RESULTS--1,684 Respondents

1. THERE HAS BEEN STRONG INTEREST IN CITY LIGHT PROMOTING CONSERVATION. WHICH OF THE FOLLOWING WOULD YOU SUPPORT?

Yes	Responses
76%	Conservation features required by law for all new construction
52%	Insulation and weatherstripping required by law for all existing homes that convert to electric heat
71%	Special conservation rates or discounts for homes and businesses that significantly reduce their electrical consumption
44%	City Light financing the insulation of homes with owner paying back over time
58%	City Light leasing equipment (such as energy-efficient heat pumps) that significantly reduce consumption of electricity
73%	A rate structure that would provide enough electricity for essential needs at a low rate, with a progressively higher rate for those who consume more
6%	Maintain lower rates for current users and have new users pay a higher rate

24% Attach switching devices to home meters to control use of electricity during the periods when demand is greatest

68% Reduce light levels in business and office buildings

2. HOUSEHOLD USES THAT CONSUME THE MOST ELECTRICITY ARE ELECTRIC HEAT, WATER HEATERS, CLOTHES DRIERS, RANGES AND REFRIGERATORS. IN WHICH OF THE FOLLOWING WAYS WOULD YOU BE WILLING TO REDUCE CONSUMPTION?

		Average Savings	Yes Responses
a.	Turn down thermostat to 68	(30%)	79%
b.	Lower hot water temperature	(10%)	57%
c.	Insulate and weatherstrip	(30%)	72%
d.	Install storm windows	(15%)	46%
e.	Purchase heat pump	(50%)	31%

3. WOULD YOU BE WILLING TO PARTICIPATE IN A MAJOR CONSERVATION EFFORT IF IT WOULD ELIMINATE THE NEED FOR BUILDING NEW PLANTS TO GENERATE ELECTRICITY?

78% Yes 14% No 9% Object/Abstain

4. PLEASE RATE THE FOLLOWING ENERGY STRATEGIES FOR MEETING SEATTLE'S FUTURE ELECTRICAL NEEDS IN THE ORDER OF YOUR PREFERENCE.

Rank #1

36% An all-out conservation approach and build no new generating plants

13% Moderate conservation approach and develop the following hydroelectric sites: raise Ross Dam and build Copper Creek Dam on the Skagit

5% Moderate conservation and build only nuclear generation plants

2% Moderate conservation and build coal generation plants

3% Little conservation and both raise Ross Dam and build nuclear power plants

9% Encourage use of electricity to replace oil and natural gas and develop all feasible ways of generating electricity

34% Promote strong conservation program now and delay all other decisions about building new plants until more is known about the effectiveness of conservation

5. DO YOU THINK THAT IN MAY OF 1976 THE SEATTLE CITY COUNCIL SHOULD PERMIT CITY LIGHT TO JOIN WITH OTHER PUBLIC UTILITIES IN BUILDING NUCLEAR POWER PLANTS THAT GENERATE ELECTRICITY AT SATSOP (near Aberdeen) AND HANFORD (near Richland)?

30% Yes   62% No   7% Object/Abstain

6. THERE IS PUBLIC CONTROVERSY ABOUT THE SAFETY OF NUCLEAR POWER PLANTS. PLEASE CHECK THE STATEMENT THAT MOST CLOSELY REFLECTS YOUR FEELINGS ON THIS ISSUE.

Agree

23% I believe that nuclear power plants are safe

41% I do not believe that nuclear power plants are safe

34% I am uncertain about the safety of nuclear power plants and believe we should have more information before we build them

1% Object/Abstain

Freedom From Want

Joseph Bell
Director, Seattle Income
Maintenance Experiment Office

In June of 1976, People Power took a focused look at freedom from want as part of its "New Birth of Freedom" program. This presentation briefly examines the results of that effort and goes on to illustrate the need for new social welfare programs to be examined in light of their policy implications.

We are in a unique position at this particular juncture in our history as all of our major social welfare programs are slated for overhaul. These include work, welfare, health, and housing programs. Because of this unique situation we have, perhaps for the first time, the opportunity to establish a policy framework that reflects the desirable valuation of all human beings in our society. We have an opportunity to start out with a policy analysis approach before, rather than after, the start-up of new programs.

In examining the results of People Power's efforts regarding freedom from want, four major themes emerge:

1. Poverty is a function of our economic structure.

2. Work is the major means of achieving material ends, self-worth and social status.

3. Education is a major access to work.

4. Welfare, while justified in concept, does not work and is dehumanizing.

A review of the material from a task force of community people concerned with the issue of freedom from want and the media programs, especially the television presentations, "In the Midst of Plenty" and "Freedom from Want," suggests that there is enormous confusion between social policy and economic policy. The primary spokespersons emerging from the material are Robert Theobald and Frances Fox-Piven.

Theobald takes the social policy approach in his papers, "One Two Plenty" and "Problem/Possibility Focuser: On the Distribution of Resources/Income," which were used as position papers for the task force of community people in setting up public forums and developing the television presentations. He explores his thesis of "enoughness": a world in which too much is as undesirable as too little. Piven's thesis, which is an economic approach, seems to be that the poor do not benefit from current economic policy in that the monies in social programs are transferred ultimately between the middle and upper classes. She contends that until the poor have a fair share of the labor market they will continue to get poorer.

Underlying all of this material and opinion seems to be a focus on two "solutions": one being the "guaranteed annual income (GAI)" or "negative income tax (NIT)," as a solution that could address in a satisfactory manner most of the perceived problems generated by current policies and programs. The second focus is on work as the most ideal solution in the form of true full employment achieved through the utilization of "government as the employer of last resort (GAEOLR)."

What is clear from the material is that while the program components are appreciated, the policy implications are not. This is due in large part to the fact that most of us are rarely presented with information structured in a way that sheds any light on the policy implications. We are almost always presented with programs and their components. This approach is most likely to lead to examining the logic and internal consistency of program goals and costs. This is, of course, thinking that needs to be done. Unfortunately, however, it is a fragmented approach to examining social issues. The tendency is to examine and judge the merits of each individual social program rather than as one component of the total social mosaic. The ultimate result is that we become frustrated in attempting to intelligently keep up with the multitude of programs and their administering agencies. In reviewing the television programs, task force minutes, and interview results, it was this frustration that stood out the most. The concerns were expressed either on the philosophical or on the "nuts and bolts" program level and seldom in between at the policy level. It was very clear, however, that the issue of freedom from want was seen primarily as an economic issue. Given these conditions, the remainder of this presentation will be focused on structuring the income approach to freedom from want on the middle ground of policy analysis. Hopefully this middle ground will prove less frustrating than either the philosophical or program component approaches evidenced in the reviewed material.

The issue, and the focus as I see it, is one of values and choices: the valuation of people and the policy choices selected to reflect that valuation. If one is to look for the clearest index of how a society values itself and its people, one should examine not social programs but, rather, social policy.

This presentation is in essence a tribute to Richard M. Titmuss. Those of you who are familiar with his works will recognize the basis of this presentation as an expansion or an adaptation of some of the notions and positions put forth in Social Policy: An Introduction (Pantheon Books, N.Y., 1974).

The following construct is offered as a means of viewing with some degree of clarity both economic approaches under consideration: GAEOLR and GAI/NIT. It can best be described as a model of values and choices. The model is comprised of three components:

A. Means of deriving income.

B. The value maxims reflected in each income means and each policy mode.

C. Major policy modes from which to choose.

The outline below itemizes the various means for deriving income, the underlying values and the policy modes available. Later I will discuss the relationships between them.

Logically, one would first assess the value(s) to be encompassed, select an appropriate policy mode, and then institute the appropriate income means to achieve the desired value. However, since most of us first come in contact with the means and through their impact come to reflect on the implied valuation of ourselves as human beings, and then examine the underlying policy, I will proceed in that order.

A. MEANS OF INCOME AT ISSUE

1. Wages: employment
2. Social insurance based on wages and years in work: e.g., veterans' benefits, union benefits
3. Social insurance based on wages, years in work and need: e.g., social security
4. Public assistance, e.g., food stamps, AFDC, housing subsidies
5. GAI or NIT

B. VALUE MAXIMS AT ISSUE
(To each in accordance with his or her)

1. need
2. worth (experience, education, etc.)
3. merit (years in work)
4. work (productivity)
5. our collective need

C. POLICY MODES AT ISSUE

A. Residual Welfare
    1. Residual Employment
B. Industrial Achievement-Performance
C. Institutional Redistribution

It should be noted that the fifth means (GAI or NIT) is proposed rather than actual, as well as the fifth maxim (to each in accordance with our collective needs).

The policy modes can be defined as follows:

Mode A. The Residual Welfare Mode or "Welfare People as Residue." This formulation is based on the premise that there are two "natural" (or social given) channels through which an individual's needs are properly met; the private market and the family. Only when these break down should social welfare institutions come into play and then only temporarily. It has been said that the true object of the welfare state is to teach people how to do without it. The theoretical basis of this model, according to Titmuss, can be traced back to the early days of the English Poor Law, and finds support in organic-mechanistic-biological constructs of society advanced by sociologists like Spenser and Radcliffe-Brown, and economists like Friedman, Hayek and the founders and followers of the Institute of Economic Affairs in London. This mode can be said to best reflect Means 1, 2, 3 and 4: work, special insurances, social insurances, and (with the primary emphasis) public assistance. The maxims reflected are 1, 2, and 3: individual need, worth, and merit. Government's role is restricted to redistribution or transfer payments to the public assistance sector and then only after a test of means.

Mode A 1. The Residual Employment Mode. This is identical to Mode A except that transfer payments are eliminated in favor of available work presumably provided by and subsidized by governments.

Mode B. The Industrial Achievement-Performance Mode or "Only Work is Beautiful." This mode holds that social needs should be met on the basis of both merit and work performance. This mode is derived from various economic and psychological theories concerned with incentives, effort, and reward, and the formation of class and group loyalties. It can be described as the "full employment" mode. If it is defined in the Fox-Piven sense, it would preclude welfare or any other social policy approach, and rest purely on economic principle.

It is her position that freedom of choice is best attained through the independence afforded by work. This mode also rests on the "worth and work" maxims of distributive justice, but the assumption is made only in terms of the individual and encompasses the "individualistic ethic of private social policies." This mode requires each individual to secure his/her own welfare through delayed gratification; i.e., by diligent savings and investments, one provides for such things as old age, housing needs, children, health care, etc. Thus no unmerited subsidy should be granted. It assumes, on the other hand, that special bonuses such as tax breaks, insurance benefits, and pensions should be granted those who work.

Mode C. The Institutional Redistributive Mode or "Share and Share Alike." This mode sees social welfare as a major integrated institution in society, providing universalist services outside the market on the principle of need. It is in part based on theories about the multiple effects of social change and the economic system, and in part on the principle of social equality. It is basically a mode incorporating systems of redistribution in command-over-resources-through-time. The importance of this mode is the concept of command-over-resources-through-time; i.e., the use of resources toward social, rather than economic, principles. Social principle dictates that decisions be based on the collective needs of the society, while economic principle requires that decisions be made in accord with the individual justice merited by one's work and subsequent worth--the individualistic ethic of private economic policy. This "economic" policy becomes, in fact, the social policy; i.e., it specifies distributive rewards for those who work and "earn" without specifying or even acknowledging those who, for whatever reason(s), do not, cannot, or can no longer, participate through the labor market.

In order to appreciate the difference in the implications of each of the policy modes, let us apply the model to GAEOLR and GAI/NIT.

GAEOLR: Let's assume there is a direct and straightforward relationship between the control of employment and the control of social policy; therefore, if industry is the employer of first resort, it is by definition the social policy determiner of first resort through its individualistic ethic of social/economic justice. It follows, then, that government as the employer of last resort is also the policy determiner of last resort.

The employer of first or last resort can be defined in two senses: a policy sense and an economic sense. In the policy sense, the employer of first or last resort is defined not in relation to its actual hiring, but in terms of control of resources through time, especially the most significant resource--human labor. In the economic sense, the reference is to employment numbers: the employer of first resort as the major employer and the employer of last resort being the final line of defense against unemployment.

It must be noted that government is now the employer of last resort in that employment is, as a matter of national policy, restricted to industry, so much so that to supply industry with workers who are directly subsidized by government is excluded from practice. Thus, social policy is now in the hands of industry. Government as the employer of last resort, as it is being proposed in the economic sense, would not differ in character from the current "residual welfare mode;" it would simply become a "residual employment mode" which would still carry with it all the notions of deviancy and subsequent negative attitudes.

The industrial achievement-performance mode plus GAEOLR becomes Mode A_1--residual employment--and like its predecessor, the residual welfare mode, allows that social services be concerned with social "problems" and social "pathology" aimed at "adjusting and rehabilitating" families and individuals to the values and norms of our society. It has, then, as one of its objectives, social control through law and order. Theobald's conception of this condition as a new form of slavery is one with which I can concur.

GAI/NIT: The guaranteed annual income/negative income tax approach as it is currently conceived does away with notions of problems, pathology, and the consequent focus on social adjustment and social rehabilitation. It has income as the single criterion for participation rather than "categorical assistance." Far from ignoring the individual and societal needs for productive working people, it allows (through a less than 100% tax rate on earned income) work to be considered as a matter of choice--a limited choice, but nonetheless a choice. It will conceivably allow one to accept a lesser-paying but more appealing job, to hold out a little longer for the job one desires, or to reduce the number of hours worked in order to put one's energy into areas that have very important secondary social effects; e.g., more time with one's family or more leisure time activity. It is doubtful that any guaranteed income would be of a magnitude sufficient to "live it up." For my purpose here, magnitude is not so much the issue as is the implication about the valuation of people.

The GAI/NIT and full employment/GAEOLR appear on the surface to be compatible solution approaches and, indeed, they can work in conjunction with each other as programs. I suggest through the following model that the policy implications of these approaches are completely different.

POLICY MODES AT ISSUE

MODE A:	Residual Welfare	Means 2, 3, 4	Maxims 1, 2, 3
MODE a:	Residual Employment	Means 1, 2, 3	Maxims 1, 2, 4
MODE B:	Industrial Achievement-Performance	Means 1, 4	Maxims 2, 3, 4
MODE C:	Institutional Redistributive	Means 1, 5	Maxim 5

The full employment/GAEOLR program best fits the individual "work" and "worth" maxims and the industrial achievement-performance policy mode. It is my opinion that Frances Fox-Piven is correct in her assumptions about the negative psycho/socio/economic impact of the current welfare system on the poor. The residual welfare mode does carry with it the notion of a meritocracy—reward for work/worth and punishment for deviancy and failure. She is correct also in her assumption that economic policy, i.e., work, offers the most freedom of choice and status to the individual.

On the other hand, she is, in my opinion, incorrect in the assumption that the GAEOLR approach to full employment necessarily leads to the desired individual freedoms that go with full employment. Government as the employer of last resort equals industry as the employer of first resort and hence industry as the social policy maker of first resort.

The GAEOLR then best fits the industrial achievement-performance mode which reflects Means 2, 3, and 4: special insurances, social insurances, and (with the primary emphasis) public assistance. The maxims reflected are 1, 2, and 3: individual need, worth, and merit. Government's role is restricted to redistribution or transfer payments to the public assistance sector and then only after a test of means.

The GAI/NIT best fits the institutional redistributive policy mode with its emphasis on work and the value maxim "in accordance with our need." The institutional redistributive mode sees social service as an instrument to provide for certain specified needs in our society regardless of value judgments about individuals and families as to whether or not they constitute social "problems."

I have attempted to point out the potential policy conflict inherent in the GAEOLR and NIT and the value of a policy analysis approach. It is my recommendation that an eye be kept on the guaranteed job (GJ) legislation and NIT, health and housing experimentation toward the end of examining the implied and stated policy implications and the integration of each proposed program with each of the other programs.

The current Humphrey-Hawkins legislation and social welfare policy experimentation with NIT, health, and housing suggest that the future income security programs will be directed toward "in cash" rather than "in kind" services. The future basic economic approaches to social welfare will revolve around the NIT and GJ.

I would like to point out that these programs

A. are now considered as separate programs, and
B. potentially have serious conflicting policy implications.

The job to be done is: (1) to start to think of these programs in conjunction with each other, and (2) to take a policy, rather than a program, perspective.

If we choose to move toward an institutional rather than a residual model of social welfare, it is imperative that we take a policy approach as the first step in analysis. It is important that we avoid in this first step allowing ourselves to be caught up in the complex questions of social program analysis instead of pursuing the simplistic questions of policy. Taking the program analysis approach (a) allows programs to be examined independent of each other—the more complex the program the more likely we are to get caught up in its analysis, and (b) leads to a judgment of the desirability of the program on the basis of its internal logic; i.e., how well its components are integrated. It is clearly a different thing to judge the desirability of a program on the basis of how well it is put together than to judge its desirability based on how it is integrated with other programs toward a common, simplified, well-articulated policy goal.

In summary, it is the people's job to decide how they feel about their value as human beings and as members of society, and to demand policies that reflect their valuation. It is government's job to create programs and services that conform to these policies. It follows that the people and the government have different informational needs and should ask different questions. We must not, therefore, allow the government's program-oriented informational needs to become the people's value- and policy-oriented information needs.

Appendix

Excerpts from Court Decisions and Constitutions

edited and annotated by

Patricia M. Lines

This appendix contains excerpts from leading recent court decisions, and where appropriate the constitutional language establishing the freedom at issue. This selection by no means provides a comprehensive view of the state and direction of jurisprudential thought on each subject, but serves only to illustrate in depth some of the examples cited, directly or indirectly, in this collection of papers.

Where this book is to be used as a text, the appendix will provide an interesting contrast in the analysis of the humanist and the jurist when addressing the same issue. Where the papers focus on the needs and values of the people affected, the jurist must necessarily examine the legal system to determine whether it in fact reflects those needs and values. Sometimes it does; sometimes it does not.

Some of the freedoms discussed in the papers have constitutional status. Here it is much easier for the jurist to agree with the humanist about what should be done. Sometimes, however, the freedom at issue has little legal status. Where this happens, the jurist must proceed logically and coldly to a conclusion which the humanist may abhor. Recognizing this, some of the papers suggest a need for constitutional or other legal reform. Footnotes have been deleted.

Freedom of Speech and Religion

The First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.

The Pentagon Papers Case

Editor's Note

The Pentagon Papers case is one of the examples cited by Professor Savelle in his paper on first amendment freedoms. He generally finds the case encouraging.

In June, 1971, classified material ("top secret sensitive") from the United States Department of Defense mysteriously began appearing in the New York Times, and later, a few other newspapers throughout the country. The material contained extensive information about the military activities of the United States in Viet Nam--information which hitherto had not been available to the American public.

Shortly after its release, the prime suspect became Daniel Ellsberg, who when he voluntarily surrendered to authorities was still smiling and wherever possible, lecturing on the errors of his country in committing itself to Asian military activities, and about the deception practiced by military officials and the White House in informing the public about the war. "I'm glad it's out," Ellsberg told the press. "It is a uniquely comprehensive documentary compendium, more reliable than any other work now in public circulation. I wish it had been available to the Congress and the public two or three years ago. The documents show that Presidential assistants and other officials had virtually unlimited license to lie to the public." (*Newsweek*, June 28, 1971, at 16.)

As the evidence mounted, it appeared that Ellsberg, as a former Special Assistant in the Department of International Security Affairs in the Department of Defense, was one of the authors and one of the few people with access to the documents, entitled "History of U.S. Decision-Making Process on Viet Nam Policy", and best known as the Pentagon Papers. He had spent nine months prior to the mysterious publication in attempting to persuade high Washington officials and legislators to read the papers; the government later reported that his fingerprints, the fingerprints of a friend, Anthony Russo, and members of his family were on the papers. The evidence mounted.

Finally, Ellsberg and Russo were charged with violations of various criminal provisions of the United States Code--the retention of public property with an intent to convert it (18 U.S.C. 641); the gathering and transmitting of national defense information (18 U.S.C. 793); the concealment or removal of public records or documents (18 U.S.C. 793); and conspiracy to commit such offenses and to defraud the United States (18 U.S.C. 2071).

Trial was commenced in Los Angeles in 1972, posing tough questions about the scope and extent of first amendment rights and the power of the government to classify and conceal information that many believe should be within the public's grasp. However, because of a strange twist, linking Ellsberg with the illegal machinations of White House officials, collectively known as "Watergate" but ultimately proving to extend far beyond a mere burglary of Democratic National Party Headquarters at the Watergate apartment complex, the trial against Ellsberg and Russo was dismissed before the legal issues could be resolved. The evidence against the defendants was tainted, and the preservation of their fourth amendment rights were at stake.

These events inspired much additional litigation, including a suit by the government against the New York Times. In a motion for a temporary restraining order, the government sought a court injunction against further publication of the papers. The United States Court of Appeals for the District of Columbia granted the motion, but upon further consideration, denied the motion for a preliminary injunction. What follows is first, the opinion of a dissenting judge in one circuit court's decision to grant a temporary restraining order, the Supreme Court's decision to affirm a denial of a motion for preliminary injunction, and a concurring opinion in this latter decision.

United States v. Washington Post Company
446 F.2d 1322, 1325 (D.C. Cir. 1971)

J. Skelly Wright, dissenting

This is a sad day for America. Today, for the first time in the two hundred years of our history, the executive department has succeeded in stopping the presses. It has enlisted the judiciary in the suppression of our most precious freedom. As if the long and sordid war in Southeast Asia had not already done enough harm to our people, it now is used to cut out the heart of our free institutions and system of government. I decline to follow my colleagues down this road and I must forcefully state my dissent. * * *

Under the First Amendment of our Constitution, prior restraints upon speech and press are even more serious than subsequent punishment. There is no question as to the extent of the deterrent effect. A restraining order, imposed by a court, applies directly against a particular individual or newspaper and carries very specific and very severe penalties for contempt. It is imposed before the speech at issue has even seen the light of day. As in this case, it is imposed even before the judges have read the offending material—imposed quite literally in the dark. The weapon of the prior injunction is a weapon long unused, but potentially deadly.

It is said that a temporary restraining order suppresses free speech only for a few days, and what is the hurry? That argument, in my opinion, cheapens the First Amendment. All of the presumptions must run in favor of free speech, not against it. Certainly before a prior restraint can be placed on the press, even for a short time, there must be a showing of substantial and specific injury sufficient to override strong First Amendment interests.

Thus we arrive at the key issue here. The burden is on the Government. Clearly, there are some prospective harms which might conceivably justify a prior restraint on speech or press. But those harms are very exceptional and must be very convincingly established by the party seeking an injunction. The ... [Court in Near v. Minnesota] recognized as much and said:

> The protection even as to previous restraint is not unlimited. But the limitation has been recognized only in exceptional cases: ***No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not "protect a man from an injunction against uttering words that may have all the effect of force . . . "

In this case, the executive department has made no allegations—to say nothing of convincing showings—that troop movements or recruitment are threatened. Neither obscenity nor overthrow of the government is at issue. All that is at issue is what the District Court termed "essentially historical data." It is at least three years old. It records the plans and policies of bygone days; it does not reveal the current plans of the present administration which, by its own account, is pursuing a different policy.

Since we are dealing with "essentially historic data," the executive department has an even greater burden to suggest what specific sort of harm may result from its publication. Yet it seeks to suppress history solely on the basis of two very vague allegations: (1) the data has been classified as "top secret," because (2) the data is said to adversely affect our national security. These allegations are made in completely conclusory fashion in the only two affidavits submitted to this court.

The affidavits contain no facts whatever to support the conclusions or to specify the anticipated harms. Of course, the Government may not know precisely which documents the Post has. But it has identified the 47-volume report from which the documents are taken. The Government could suggest and support at least one specific harm that would result from publication of anything in the 47 volumes. It has not even done that.

With the sweep of a rubber stamp labelled "top secret," the executive department seeks to abridge the freedom of the press. It has offered no more. We are asked to turn our backs on the First Amendment simply because certain officials have labelled material as unfit for the American people and the people of the world. Surely, we must demand more. To allow a government to suppress free speech simply through a system of bureaucratic classification would sell our heritage, far, far too cheaply.

It is said that it is better to rely on the judgment of our government officials than upon the judgment of private citizens such as the publishers of the Washington Post. Again, that misses the point. The First Amendment is directed against one evil: suppression of the speech of private citizens by government officials. It embodies a healthy distrust of governmental censorship. More importantly, it embodies a fundamental trust of individual Americans. Any free system of government involves risks. But we in the United States have chosen to rely in the end upon the judgment and true patriotism of all the people, not only of the officials.

New York Times Co. v. United States
403 U.S. 713 (1971)

Per Curiam

"Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity . . . ."The Government thus carries a heavy burden of showing justification for the imposition of such a restraint. . . ." The District Court for the Southern District of New York in the New York Times case and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia in the Washington Post case held that the Government had not met that burden. We agree.

The judgment of the Court of Appeals for the District of Columbia Circuit is therefore affirmed. The order of the Court of Appeals for the Second Circuit is reversed and the case is remanded with directions to enter a judgment affirming the judgment of the District Court for the Southern District of New York. The stays entered June 25, 1971, by the Court are vacated. The judgments shall issue forthwith.

* * *

Mr. Justice Brennan, concurring opinion

I write separately in these cases only to emphasize what should be apparent: that our judgments in the present cases may not be taken to indicate the propriety, in the future, of issuing temporary stays and restraining orders to block the publication of material sought to be suppressed by the Government. So far as I can determine, never before has the United States sought to enjoin a newspaper from publishing information in its possession. But even if it be assumed that some of the interim restraints were proper in the two cases before us, that assumption has no bearing upon the propriety of similar judicial action in the future. To begin with, there has now been ample time for reflection and judgment; whatever values there may be in the preservation of novel questions for appellate review may not support any restraints in the future. More important, the First Amendment stands as an absolute bar to the imposition of judicial restraints in circumstances of the kind presented by these cases.

* * *

Our cases, it is true, have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overriden. . . .

Thus, only governmental allegation and proof that publication must inevitably, directly and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order. In no event may mere conclusions be sufficient: for if the Executive Branch seeks judicial aid in preventing publication, it must inevitably submit the basis upon which that aid is sought to scrutiny by the judiciary. And therefore, every restraint issued in this case, whatever its form, has violated the First Amendment--and not less so because that restraint was justified as necessary to afford the courts an opportunity to examine the claim more thoroughly. Unless and until the Government has clearly made out its case, the First Amendment commands that no injunction may issue.

Freedom and Equality

The Fourteenth Amendment to the United States Constitution

> . . . No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Editor's Note

The most famous case in this century was one decided under the Fourteenth Amendment's equal protection clause—*Brown v. Board of Education*, *infra*. A more recent case—decided only a decade ago--posed problems similar to *Brown* but focused on a different aspect of the life of citizens--marriage. Here the Supreme Court had to grapple with an argument that all persons were treated equally because no white could marry a black and no black could marry a white. This was a "separate but equal" doctrine that the Court had so thoroughly rejected in *Brown*.

The Lovings were an interracial couple, residents of Virginia, and subject to its laws, which prohibited interracial marriages. The high court of Virginia upheld the law and this decision was appealed to the United States Supreme Court.

Loving v. Virginia
388 U.S. 1 (1967)

In upholding the constitutionality of these provisions in the decision below, the Supreme Court of Appeals of Virginia referred to its 1955 decision in Naim v. Naim. In Naim, the state court concluded that the State's legitimate purposes were "to preserve the racial integrity of its citizens," and to prevent "the corruption of blood", "a mongrel breed of citizens", and "the obliteration of racial pride", obviously an endorsement of the doctrine of White Supremacy. The court also reasoned that marriage has traditionally been subject to state regulation without federal intervention, and, consequently, the regulation of marriage should be left to exclusive state control by the Tenth Amendment.

. . . (T)he State argues that the meaning of the Equal Protection Clause, as illuminated by the statements of the Framers, is only that state penal laws containing an interracial element as part of the definition of the offense must apply equally to whites and Negroes in the sense that members of each race are punished to the same degree. Thus, the State contends that, because its miscegenation statutes punish equally both the white and the Negro participants in an interracial marriage, these statutes, despite their reliance on racial classifications, do not constitute an invidious discrimination based upon race. . . .

. . . The mere fact of equal application does not mean that our analysis of these statutes should follow the approach we have taken in cases involving no racial discrimination where the Equal Protection Clause has been arrayed against a statute discriminating between the kinds of advertising which may be displayed on trucks in New York City . . . or an exemption in Ohio's ad valorem tax for merchandise owned by a non-resident in a storage warehouse . . . . In these cases, involving distinctions not drawn according to race, the Court has merely asked whether there is any rational foundation for the discriminations, and has deferred to the wisdom of the state legislatures. In the case at bar, however, we deal with statutes containing racial classifications, and the fact of equal application does not immunize the statute from the very heavy burden of justification which the Fourteenth Amendment has traditionally required of state statutes drawn according to race.

The State argues that statements in the Thirty-ninth Congress about the time of the passage of the Fourteenth Amendment indicate that the Framers did not intend the Amendment to make unconstitutional state miscegenation laws. Many of the statements alluded to by the State concern the debates over the Freedman's Bureau Bill, which President Johnson vetoed, and the Civil Rights Act of 1866, 14 Stat. 27, enacted over his veto. While the statements have some relevance to the intention of Congress in submitting the Fourteenth Amendment, it must be understood that they pertained to the passage of specific statutes and not to the broader, organic purpose of a constitutional amendment. As for the various statements directly concerning the Fourteenth Amendment, we have said in connection with a related problem, that although these historical sources "cast some light" they are not sufficient to resolve the problem; "(a)t best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States'. Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect." Brown v. Board of Education, 347 U.S. 483, 489 (1954). See also Strauder v. West Virginia, 100 U.S. 303, 310 (1880). We have rejected the proposition that the debates in the Thirty-ninth Congress or in the state legislatures which ratified the Fourteenth Amendment supported the theory advanced by the State, that the requirement of equal protection of the laws is satisfied by penal laws defining offenses based on racial classifications so long as white and Negro participants in the offense were similarly punished. . . .

There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. The statutes proscribe generally accepted conduct if engaged in by members of different races. Over the years, this Court has consistently repudiated "(d)istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality." . . . At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the "most rigid scrutiny" . . . and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. Indeed, two members of this Court have already stated that they "cannot conceive of a valid legislative purpose . . . which makes the color of a person's skin the test of whether his conduct is a criminal offense." . . .

There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy. We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.

Editor's Note

Loving and Brown were based upon relatively simple facts. There was a blatant Jim Crow law that required racial separation in both cases. Today such laws have been abolished, but that does not necessarily spell the end to official policies of inequality. The problem, now, however, is one of proof. How does one prove that inequality still exists, as a result of official policy, when all one can do is show a statistical result? The Supreme Court attempted to grapple with this question in a case dealing in the possible race discrimination in public employment. The Court's general discussion of the issue follows. It should be clear, from the Burger Court's discussion, that it will be more difficult in the future to prove that a wrongful policy produced a visibly unequal result.

Washington v. Davis

426 U.S. 229 (1976)

* * *

The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race. It is also true that the Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups. . . . But our cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact.

Almost 100 years ago, Strauder v. West Virginia, 100 U.S. 303 (1879), established that the exclusion of Negroes from grand and petit juries in criminal proceedings violated the Equal Protection Clause, but the fact that a particular jury or a series of juries does not statistically reflect the racial composition of the community does not in itself make out an invidious discrimination forbidden by the Clause. "A purpose to discriminate must be present which may be proven by systematic exclusion of eligible jurymen of the prescribed race or by an unequal application of the law to such an extent as to show intentional discrimination." Akins v. Texas, 325 U.S. 398, 403-404 (1945). A defendant in a criminal case is entitled "to require that the State not deliberately and systematically deny to the members of his race the right to participate as jurors in the administration of justice." . . .

The rule is the same in other contexts. Wright v. Rockefeller, 376 U.S. 52 (1964), upheld a New York congressional apportionment statute against claims that district lines had been racially gerrymandered. The challenged districts were made up predominantly of whites or of minority races, and their boundaries were irregularly drawn. The challengers did not prevail because they failed to prove that the New York legislature "was either motivated by racial considerations or in fact drew the districts on racial lines"; the plaintiffs had not shown that the statute "was the product of a state contrivance to segregate on the basis of race or place of origin". . . . The dissenters were in agreement that the issue was whether the "boundaries . . . were purposefully drawn on racial lines". . . .

The school desegregation cases have also adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose. That there are both predominantly black and predominantly white schools in a community is not alone violative of the Equal Protection Clause. The essential element of de jure segregation is "a current condition of segregation resulting from intentional state action . . . the differentiating factor between de jure segregation and so-called de facto segregation . . . is purpose or intent to segregate" . . . .The Court has also recently rejected allegations of racial discrimination based solely on the statistically disproportionate racial impact of various provisions of the Social Security Act because "the acceptance of appellant's constitutional theory would render suspect each difference in treatment among the grant classes, however lacking the racial motivation and however otherwise rational the treatment might be". . . .

This is not to say that the necessary discriminatory racial purpose must be express or appear on the face of a statute, or that a law's disproportionate impact is irrelevant in cases involving Constitution-based claims of racial discrimination. A statute, otherwise neutral on its face, must not be applied so as to invidiously discriminate on the basis of race. . . . It is also clear from the cases dealing with racial discrimination in the selection of juries that the systematic exclusion of Negroes is itself such an "unequal application of the law . . . as to show intentional discrimination." . . . A prima facie case of discriminatory purpose may be proved as well by the absence of Negroes on a particular jury combined with the failure of the jury commissioners to be informed of eligible Negro jurors in a community . . . .With a prima facie case made out, "the burden of proof shifts to the State to rebut the presumption of unconstitutional action by showing that permissible racially neutral selection criteria and procedures have produced the monochromatic result" . . . .

Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. It is also not infrequently true that the discriminatory impact—in the jury cases for example, the total or seriously disproportionate exclusion of Negroes from jury venires—may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds. Nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. . . .

(Justices Brennan and Marshall dissented.)

Freedom and Learning

Editor's Note

The most important Supreme Court decision of this century has been Brown v. Board of Education, by Mr. Justice Warren's own analysis. The significance of Brown was in its analysis of the previous doctrine that "separate but equal" facilities for different races could be considered equal under the Fourteenth Amendment. Brown rejected this, and in the process, said some fairly significant things about the importance of education in American society. This portion of the Court's opinion is reproduced here.

Brown v. Board of Education
347 U.S. 483 (1954)

* * *

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson (upholding "separate but equal" transportation facilities--Ed.) was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In Sweatt v. Painter . . . in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In McLaurin v. Oklahoma State Regents . . . the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: " . . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade or high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually

> interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system."

Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. . . .

Editor's Note

Whatever the importance of education, as recognized by the Supreme Court in Brown, the constitutional right at issue in that case was the right to equal treatment under the law regardless of one's race. A right to education does not exist under the federal constitution. This was made clear by the Court in a case arising in the state of Texas, where the plaintiffs had challenged the property tax system as a fair means of providing for education to all the children in the state. The plaintiffs alleged that this system resulted in poor funding levels for poor districts, and this was a violation of the child's right to equal treatment. The Court had previously indicated that in most cases involving a challenge based on the equal protection clause, it would uphold a state's policies if they were reasonable. Only in racial discrimination cases, and in cases where a fundamental right was in jeopardy, would the Court more strictly scrutinize the state's action. In this case, the Court stated, unequivocally, that there is no fundamental right to education in the federal constitution.

San Antonio School District v. Rodriguez
311 U.S. 1 (1972)

. . . It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. . . .

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. It is appellees contention, however, that education is distinguishable from other services and benefits provided by the State because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. Specifically, they insist that education is itself a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote. In asserting a nexus between speech and education, appellees urge that the right to speak is meaningless unless the speaker is capable of articulating his thoughts intelligently and persuasively. The "marketplace of ideas" is an empty forum for those lacking basic communicative tools. Likewise, they argue that the corollary right to receive information becomes little more than a hollow privilege when the recipient has not been taught to read, assimilate, and utilize available knowledge.

A similar line of reasoning is pursued with respect to the right to vote. Exercise of the franchise, it is contended, cannot be divorced from the educational foundation of the voter. The electoral process, if reality is to conform to the democratic ideal, depends on an informed electorate: a voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed.

We need not dispute any of these propositions. The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted. These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short. Whatever merit appellee's argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.

Furthermore, the logical limitations on appellee's nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process, and that they derive the least enjoyment from the benefits of the First Amendment. . . .

We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive. In one further respect we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny. The present case, in another basic sense, is significantly different from any of the cases in which the Court has applied strict scrutiny to state or federal legislation touching upon constitutionally protected rights. Each of our prior cases involved legislation touching upon constitutionally protected rights. Each of our prior cases involved legislation which "deprived", "infringed", or "interfered" with the free exercise of some such fundamental personal right or liberty. . . . Mr. Justice Brennan, writing for the Court in *Katzenbach v. Morgan*, 384 U.S. 641 (1966), expresses well the salient point:

> "This is not a complaint that Congress . . . has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the relief effected (to others similarly situated) . . . .
>
> "(The federal law in question) does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law . . . We need only decide whether the challenged limitation on the relief effected . . . was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights . . . is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a 'statute is not invalid under the Constitution because it might have gone farther than it did,' . . . that a legislature need not 'strike at all evils at the same time,' . . . and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind . . . ' "

The Texas system of school financing is not unlike the federal legislation involved in *Katzenbach* in this regard. Every step leading to the establishment of the system Texas utilizes today—including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid—was implemented in an effort to *extend* public education and to improve its quality. Of course, every reform that benefits some more than others may be criticized for what it fails to accomplish. But we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution.

(Justices Marshall, Brennan and Douglas dissented, as they would have accorded some greater status to education. Justice White dissented for other reasons.)

Editor's Note

In many State constitutions, including Washington's, education does have a more elevated status than it does in the Federal Constitution, where it is not expressly mentioned. Questions of adequate school funding, such as are raised by the Kenowitz-Kangas paper, must be resolved in the light of the following State constitutional provisions.

Washington State Constitution

Article IX

Education

Sec. 1. Preamble. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Sec. 2. Public School System. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Editor's Note

As noted in the paper on grassroots freedom, the American democratic ideal encompasses a notion of freedom to be politically active at the grassroots, but this is not explicitly guaranteed in the Constitution. What statutory provisions exist merely provide access to information that would otherwise be withheld from the general public.

Grassroots freedom, as a constitutional matter, depends on freedom of speech, press and assembly, and on provisions for equality in voting and other matters. Even those more firmly grounded freedoms have their hazy edges, and grassroots freedom is even less secure.

Although the Constitution does not recognize political activism at the local level as a right, in and of itself, the American culture does. This has led, at times, to more-or-less rational judicial decisions which seem totally irrational to almost everyone but the jurists themselves.

Whitcomb v. Chavis provides a good illustration.

When the state of Indiana reorganized its legislative districts, it made Marian County (which includes Indianapolis) a multi-member district with eight senators and 15 representatives, all elected at large.

There was an identifiable "ghetto" area in Indianapolis (located within an area called Center Township) which was the home for 97,000 non-whites and 35,000 whites. It was contiguous to a predominantly white residential area (Washington Township).

Ten years after redistricting, analysis indicated that Washington Township, which held about 14% of Marian County's population, had been the residence of about 48% of its state senators and 34% of its representatives. The ghetto area in Center Township, which held 18% of the county's population, could claim only about 5% of the county's senators and 6% of the county's representatives.

A federal district court found that the ghetto area was big enough to have two representatives and one senator, and ordered the state to redistrict Marian County. The Supreme Court reversed.

Whitcomb v. Chavis
403 U.S. 124 (1971)

* * *

Rather than squarely finding unacceptable discrimination against outstate voters in favor of Marion County voters, the trial court struck down Marion County's multi-member district because it found the scheme worked invidiously against a specific segment of the county's voters as compared with others. The court identified an area of the city as a ghetto, found it predominantly inhabited by poor Negroes with distinctive substantive-law interests and thought this group unconstitutionally underrepresented because the proportion of legislators with residences in the ghetto elected from 1960 to 1968 was less than the ghetto's proportion of the population, less than the proportion of legislators elected from Washington Township, a less populous district, and less than the ghetto would likely have elected had the county consisted of single-member districts. We find major deficiencies in this approach.

First, it needs no emphasis here that the Civil War Amendments were designed to protect the civil rights of Negroes and that the courts have been vigilant in scrutinizing schemes allegedly conceived or operated as purposeful devices to further racial discrimination. There has been no hesitation in striking down those contrivances that can fairly be said to infringe on Fourteenth Amendment rights. . . . But there is no suggestion here that Marion County's multi-member district, or similar districts throughout the State, were conceived or operated as purposeful devices to further racial or economic discrimination . . . .

Nor does the fact that the number of ghetto residents who were legislators was not in proportion to ghetto population satisfactorily prove invidious discrimination absent evidence and findings that ghetto residents had less opportunity than did other Marion County residents to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record or in the court's findings indicating that poor Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court to find that inhabitants of the ghetto were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats. It appears reasonably clear that the Republican Party won four of the five elections from 1960 to 1968, that Center Township ghetto voted heavily Democratic and that ghetto votes were critical to Democratic Party success. Although we cannot be sure of the facts since the court ignored the question, it seems unlikely that the Democratic Party could afford to overlook the ghetto in slating its candidates. Clearly, in 1964—the one election which the Democrats won—the party slated and elected one senator and one representative from Center Township ghetto as well as one senator and four representatives from other parts of Center Township and two representatives from census tract 220, which was within the ghetto area described by plaintiff. Nor is there any indication that the party failed to slate candidates satisfactory to the ghetto in other years. Absent evidence or findings we are not sure, but it seems reasonable to infer that had the Democrats won all of the elections or even most of them, the ghetto would have had no justifiable complaints about representation. The fact is, however, that four of the five elections were won by Republicans, which was not the party of the ghetto and which would not always slate ghetto candidates—although in 1962 it nominated and elected one representative and in 1968 two representatives from that area. If this is the proper view of this case, the failure of the ghetto to have legislative seats in proportion to its population emerges more as a function of losing elections than of built-in bias against poor Negroes. The voting power of ghetto residents have have been "cancelled out" as the District Court held, but this seems a mere euphemism for political defeat at the polls.

On the record before us plaintiffs' position comes to this: that although they have equal opportunity to participate in and influence the selection of candidates and legislators, and although the ghetto votes predominantly Democratic and that party slates candidates satisfactory to the ghetto, invidious discrimination nevertheless results when the ghetto, along with all other Democrats, suffers the disaster of losing too many elections. But typical American legislative elections are district-oriented, head-on races between candidates of two or more parties. As our system has it, one candidate wins, the others lose. Arguably the losing candidates' supporters are without representation since the men they voted for have been defeated: arguably they have been denied equal protection of the laws since they have no legislative voice of their own. This is true of both single-member and multi-member districts. But we have not yet deemed it a denial of equal protection to deny legislative seats to losing candidates, even in those so-called "safe" districts where the same party wins year after year.

Plainly, the District Court saw nothing unlawful about the impact of typical single-member district elections. The court's own plan created districts giving both Republicans and Democrats several predictably safe general assembly seats, with political, racial or economic minorities in those districts being "unrepresented" year after year. But similar consequences flowing from Marion County multi-member district elections were viewed differently. Conceding that all Marion County voters could fairly be said to be represented by the entire delegation, just as each voter in a single-member district by the winning candidate, the District Court thought ghetto voters' claims to the partial allegiance of eight senators and 15 representatives was not equivalent to the undivided allegiance of one senator and two representatives; nor was the ghetto voters' chance of influencing the election of an entire slate as significant as the guarantee of one ghetto senator and two ghetto representatives. As the trial court saw it, ghetto voters could not be adequately and equally represented unless some of Marion County's general assembly seats were reserved for ghetto residents serving the interests of the ghetto majority. But are poor Negroes of the ghetto any more underrepresented than poor ghetto whites who also voted Democratic and lost, or any more discriminated against than other interest groups or voters in Marion County with allegiance to the Democratic Party, or, conversely, any less represented than Republican areas or voters in years of Republican defeat? We think not. The mere fact that one interest group or another concerned with the outcome of Marion County elections have found themselves outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system.

There is another gap in the trial court's reasoning. As noted by the court, the interest of ghetto residents in certain issues did not measurably differ from that of other voters. Presumably in these respects Marion County's assemblymen were satisfactorily representative of the ghetto. As to other matters, ghetto residents had unique interests not necessarily shared by others in the community and on these issues the ghetto was invidiously underrepresented absent their own legislative voice to further their own policy views.

Part of the difficulty with this conclusion is that the findings failed to support it. Plaintiffs' evidence purported to show disregard for the ghetto's distinctive interests; defendants claimed quite the contrary. We see nothing in the findings of the District Court indicating recurring poor performance by Marion County's delegation with respect to Center Township ghetto, nothing to show what the ghetto's interests were in particular legislative situations and nothing to indicate that the outcome would have been any different if the 23 assemblymen had been chosen from single-member districts. Moreover, even assuming bloc voting by the delegation contrary to the wishes of the ghetto majority, it would not follow that the Fourteenth Amendment had been violated unless it is invidiously discriminatory for a county to elect its delegation by majority vote based on party or candidate platforms and so to some extent predetermine legislative votes on particular issues. Such tendencies are inherent in government by elected representatives; and surely elections in single-member districts visit precisely the same consequences on the supporters of losing candidates whose views are rejected at the polls.

The District Court's holding, although on the facts of this case limited to guaranteeing one racial group representation, is not easily contained. It is expressive of the more general proposition that any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single-member district. This approach would make it difficult to reject claims of Democrats, Republicans or members of any political organization in Marion County who live in what would be safe districts in a single-member district system but who in one year or another, or year after year, are submerged in a one-sided multi-member district vote. There are also union oriented workers, the university community, religious or ethnic groups occupying identifiable areas of our heterogeneous cities and urban areas. Indeed, it would be difficult for a great many, if not most, multi-member districts to survive analysis under the District Court's view unless combined with some voting arrangement such as proportional representation or cumulative voting aimed at providing representation for minority parties or interests. At the very least, affirmance of the District Court would spawn endless litigation concerning the multi-member district systems now widely employed in this country.

We are not insensitive to the objections long voiced to multi-member district plans. Although not as prevalent as they were in our early history, they have been with us since colonial times and were much in evidence both before and after the adoption of the Fourteenth Amendment. Criticism is rooted in their winner-take-all aspects, their tendency to submerge minorities and to overrepresent the winning party as compared with the party's state-wide electoral position, a general preference for legislatures reflecting community interests as closely as possible and disenchantment with political parties and elections as devices to settle policy differences between contending interests. The chance of winning or significantly influencing intraparty fights and issue-oriented elections has seemed to some inadequate protection to minorities, political, racial, or economic; rather, their voice, it is said, should also be heard in the legislative forum where public policy is finally fashioned. In our view, however, experience and insight have not yet demonstrated that multi-member districts are inherently invidious and violative of the Fourteenth Amendment. Surely the findings of the District Court do not demonstrate it. Moreover, if the problems of multi-member districts are unbearable or even unconstitutional it is not at all clear that the remedy is a single-member district system with its lines carefully drawn to ensure representation to sizable racial, ethnic, economic or religious groups and with its own capacity for over- and underrepresenting parties and interests and even for permitting a minority of the voters to control the legislature and government of a State. The short of it is that we are unprepared to hold that district-based elections decided by plurality vote are unconstitutional in either single- or multi-member districts simply because the supporters of losing candidates have no legislative seats assigned to them. As presently advised we hold that the District Court misconceived the Equal Protection Clause in applying it to invalidate the Marion County multi-member district.

* * *

(Justices Douglas, Brennan and Marshall dissented in part, noting that if racial gerrymandering could be proven, the districting issue would take on much greater constitutional significance. Justice Stewart dissented, in part, to other aspects of the decision.)

Freedom and Technology

Editor's Note

Freedom of speech and religion, and other First Amendment freedoms, as well as protection from officially-sanctioned race discrimination, have a firm constitutional status. Freedom at the grassroots is a freedom that derives some strength from these basic constitutional protections, but nonetheless occupies a weaker position in our constitutional structure. Weaker still is freedom to deal effectively with advancing technology. This freedom, if it exists, rests upon the strength of grassroots freedom, as illustrated by Ed Sheets' paper on Seattle's decision not to buy into two nuclear energy plants.

To the extent that the constitution and laws permit political activism at the local level, Americans will be able to remain essentially democratic, despite advancing technology. It is imperative that the development of the legal system keep pace with the development of the technological world, however.

Ed Sheets describes a successful effort to involve numerous citizens, few of whom had a technical background, in the decision-making process for some highly technical issues. It is noteworthy that the legal system does not necessarily require such involvement, and it is possible for technocrats to make all the essential decisions, including political decisions, through their control of necessary data.

One of the legal safeguards against this result is found in laws such as the Federal-Aid Highway Act and the National Environmental Policy Act (NEPA). Portions of both these laws are set forth below, along with a Supreme Court decision which determined that NEPA did not modify the Interstate Commerce Act and that a decision made in violation of NEPA could not be judicially enjoined if it would disrupt the procedure set forth in the Interstate Commerce Act.

These excerpts illustrate the fragile nature of the citizens' right to deal effectively with technology. The story Ed Sheets tells in his paper may be the exception, rather than the rule. Certainly it will be the exception if technocrats decide that they do not wish to involve large numbers of people in their decisions. The present legal structure is not solid enough to withstand their determined effort to move forward on a technical project regardless of political judgements.

Note, for example, that while the Highway Act requires a public hearing, NEPA does not. Only the regulations under NEPA—a presidents' order and regulations of the Council on Environmental Quality—does this, and only where the agency deems it appropriate.

Federal-Aid Highway Act
23 U.S.C. sec. 128(a) (1970)

Any State highway department which submits plans for a Federal-aid highway project involving the by passing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental, and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

National Environmental Policy Act (NEPA)
42 U.S.C. 4321 et seq. (1970)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

Purpose

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Title I

Declaration of National Environmental Policy

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

* * *

Executive Order 11514
Protection and Enhancement of Environmental Quality

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the

Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of Federal Agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

* * *

Supreme Court Decision under NEPA

Editor's Note

In this case the Court had occasion to review the practices of the Interstate Commerce Commission (ICC) when granting permission to railroads to increase rates. The Interstate Commerce Act (ICA) permits railroads to increase rates after filing notice at least 30 days prior to the effective date of the new rates. The ICC must act to suspend the rates or they will go into effect. The ICC has authority to suspend rates for up to seven months pending an investigation and final order. Most of the nation's railroads filed a notice in December of 1971 requesting ICC permission to raise rates in five days. The ICC denied this, noting that this would "preclude the public from effective participation". ICC ex parte No. 281, 340 I.C.C. 358, 361 (Dec. 21, 1971).

On January 5, 1972, these same railroads filed a notice of a 2.5% temporary surcharge on almost all freight shipments which would be in effect until the railroads had worked out a new rate schedule.

On February 1, the Commission announced its intention to permit the 2.5% rate increase to go into effect. In March, the railroads filed a proposed permanent rate schedule, with more selective rate increases. By order of March 6, the ICC denied permission for a permanent schedule, but permitted the carriers to refile it, with an effective date of May 1, which they did.

This proposed schedule was suspended by the Commission on April 24, 1972, for seven months. The Commission also extended the effective date of the temporary surcharge from June 5 to November 30, 1972.

The lower court found that SCRAP had standing to sue, as SCRAP and the environmental groups bringing suit had used the forest, streams, mountains and other natural resources, and these resources would be disturbed by a failure to recycle goods, and the Supreme Court affirmed. 412 U.S. at 682, 690. The District Court then entered a preliminary injunction against the ICC and the railroads prohibiting the surcharge. The Supreme Court's disposition of this issue follows.

United States v. Students Challenging Regulatory
Agency Procedures (SCRAP)
412 U.S. 669 (1973)

* * *

The District Court enjoined the Commission from "permitting", and the railroads from "collecting", the 2.5% interim surcharge on recyclable commodities. Finding that NEPA implicitly conferred authority "on the federal courts to enjoin any federal action taken in violation of NEPA's procedural requirements", 346 F.Supp., at 197, it concluded that our decision in Arrow Transportation Co. v. Southern R. Co., 372 U.S. 658, did not affect judicial power to issue an injunction in the circumstances of this case. We cannot agree.

In Arrow, the Commission had suspended a railroad's proposed rates for the statutory seven-month period, and the railroad had voluntarily deferred the proposed rate for an additional five months. When the Commission had not reached a final decision within that period, the railroad announced its intent to adopt the new rates. In a suit brought to enjoin the railroad from effectuating that change, we held that the courts were without power to issue such an injunction. From the language and history of Section 15(7) of the Interstate Commerce Act, we concluded that Congress had vested exclusive power in the Commission to suspend rates pending its final decision on their lawfulness, and had deliberately extinguished judicial power to grant such relief. The factual distinctions between the present cases and Arrow are inconsequential.

It is true that the injunction in Arrow was sought after the statutory seven-month period had expired and thus represented an attempt to extend judicially the suspension period, while here the injunction was issued during the suspension period. But Arrow was grounded on the lack of power in the courts to grant any injunction before the Commission had finally determined the lawfulness of the rates, and that holding did not depend on the fact that the availability of the Commission's power of suspension had passed. Indeed, the federal court decisions cited and approved in Arrow involved instances where the courts had been asked to enjoin rates during the statutory seven-month period. . . .

Similarly, there is no significance in the fact that, unlike Arrow, the injunction in this litigation ran against the Commission as well as the railroads. The only way in which the Commission could comply with the court's order would be to exercise its power of suspension and suspend the surcharge. The injunction constitutes a direct interference with the Commission's discretionary decision whether or not to suspend the rates. It would turn Arrow into a sheer formality and effectively amend Section 15(7) if a federal court could accomplish by injunction against the Commission what it could not accomplish by injunction directly against the railroads. . . .

Thus, the only arguably significant distinction between the present litigation and Arrow is that here the Commission allegedly failed to comply with NEPA. However, we cannot agree with the District Court that NEPA has amended Section 15(7) sub silentio and created an implicit exception to Arrow so that judicial power to grant injunctive relief in this case has been revived. NEPA, one of the recent major federal efforts at reversing the deterioration of the country's environment, declares "that it is the continuing policy of the Federal Government . . . to use all practicable means and measures . . . in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans". 42 U.S.C. 4331. To implement these lofty purposes, Congress imposed a number of responsibilities upon federal agencies, most notably the requirement of producing a detailed environmental impact statement for "major Federal actions significantly affecting the quality of the human environment". 42 U.S.C. 4332 (2)(C). But nowhere, either in the legislative history or the statutory language, is there any indication that Congress intended to restore to the federal courts the power temporarily to suspend railroad rates, a power that had been clearly taken away by Section 15 (7) of the Interstate Commerce Act.

The statutory language, in fact, indicates that NEPA was not intended to repeal by implication any other statute.

Thus, 42 U.S.C. 4335 specifies that "(t)he policies and goals set forth in (NEPA) are supplementary to those set forth in existing authorizations of Federal agencies", and 42 U.S.C. 4334 instructs that the Act "shall (not) in any way affect the specific statutory obligations of any Federal agency . . . . " Rather than providing for any wholesale overruling of prior law, NEPA requires all federal agencies to review their "present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of (NEPA) and shall propose to the President . . . such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in (NEPA)." 42 U.S.C. 4333. It would be anomalous if Congress had provided at one and the same time that federal agencies, which have the primary responsibility for the implementation of NEPA, must comply with present law and ask for any necessary new legislation, but that the courts may simply ignore what we described in Arrow as "a clear congressional purpose to oust judicial power . . . . "

* * *

Our conclusion that the District Court lacked the power to grant the present injunction is confirmed by the fact that each of the policies that we identified in Arrow as the basis for Section 15(7) would be substantially undermined if the courts were found to have suspension powers simply because noncompliance with NEPA was alleged.

First, Arrow found that the Commission had been granted exclusive suspension powers in order to avoid the diverse results that had previously been reached by the courts. . . .

Second, we stressed in Arrow that Section 15(7) represents a careful accommodation of the various interests involved. The suspension period was limited as to time to prevent excessive harm to the carriers, for the revenues lost during that period could not be recouped from the shippers. On the other hand, Congress was aware that if the Commission did not act within the suspension period, then the new rates would automatically go into effect and the shippers would have to pay increased rates that might eventually be found unlawful. To mitigate this loss, Congress authorized the Commission to require the carriers to keep detailed accounts and eventually to repay the increased rates if found unlawful. To allow judicial suspension for noncompliance with NEPA, would disturb this careful balance of interests. A railroad may depend for its very financial life on an increased rate, and the rate may be perfectly just and reasonable. Granting an injunction against that rate based on the Commission's alleged noncompliance with NEPA, although the Commission had determined not to suspend the rate, would deprive the railroad of vitally needed revenues and result in an unjustified windfall to shippers.

* * *

(Justices Douglas and Marshall dissented from this part of the Court's holding. Douglas inserted into his opinion the text of two letters from Russell Train, Chairman of the Council on Environmental Quality, created pursuant to 42 U.S.C. 4342, which stressed the relationship between recycling activities and transportation costs, and which protested the approval of a rate increase without first following the requirements of NEPA. Letters of October 9, 1970 and October 30, 1972; 4.2. U.S. at 704-707. He also cited the Conference Report issued by Congress on the purpose of NEPA, H.R. Conf. Rep. No. 91-765. His opinion begins with this conference report.)

"The purpose of the new language is to make it clear that each agency of the Federal Government shall comply with the directives set out in such subparagraphs (A) through (H) unless the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible. If such is found to be the case, then compliance with the particular directive is not immediately required. However, as to other activities of that agency, compliance is required. Thus, it is the intent of the conferees that the provision 'to the fullest extent possible' shall not be used by any Federal agency as a means of avoiding compliance with the directives set out in section 102. Rather, the language in section 102 is intended to assure that all agencies of the Federal Government shall comply with the directives set out in said section 'to the fullest extent possible' under their statutory authorizations and that no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance." Id., at 9-10.

The District Court, acting responsibly in light of the broad and clear-cut policy of the Act concluded that it sets a " 'high standard' " for federal agencies, that there is no " 'escape hatch for footdragging agencies,' " that the Act does not make the preparation and use of these impact statements " 'discretionary' ", that Congress did not intend that this Act be " 'a paper tiger' ". 346 F.Supp. at 199.

Arrow Transportation Co. v. Southern R. Co., 372 U.S. 658, does not preclude review here. In Arrow there were rates which the Commission had the power to suspend but had not suspended. The power of suspension was entrusted to the Commission only; and we held that the courts should not intrude when the Commission has not acted. Here the Commission has acted; it has found that "the increases here proposed are just and reasonable, that the revenues derived therefrom will result in earnings and rates of return . . . not in excess of that required to enable" the carriers "to render adequate and efficient transportation at the lowest cost consistent with the furnishing of such service." Ex parte 281, Order of Feb. 1, 1972 (unreported). The Commission said it was not prescribing rates, though it attached conditions on approval of the rates without suspension. It made clear it would suspend the new rates if the conditions were not added. As stated by the three-judge court: "A suspension decision which effectively blackmails the carriers into submitting agency-authored rates is functionally indistinguishable from an agency order setting those rates." 346 F.Supp. at 197.

Moreover, as the three-judge court held and as Judge Friendly observed in City of New York v. United States, 337 F.Supp. 150, 164, "NEPA is a new and unusual statute imposing substantive duties which overlie those imposed on an agency by the statute or statutes for which it has jurisdictional responsibility."

The Court today greatly weakens NEPA in a crucially important segment of the federal environmental field. Movement of litter to recycling plants[1] is critically important, as Chairman Train makes abundantly clear. The alternative is to leave it underfoot or to cart it off as garbage to incinerators that pollute the air or to landfills that are getting more and more difficult to find. We know that recycled paper, recycled copper, recycled iron, and recycled glass are practical. The Federal Bureau of Mines in its pilot plant at Edmonston, Maryland, boasts that "urban ore", as it calls this debris, costs about $3 a ton and recycled is worth $11 a ton. We know that we deal here with nonrenewable resources. We are told that recycling paper saves thousands of acres of trees a year.[2]

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[1] Senator Jackson recently was reported as saying about these impact statements: "We also should be able to get generic environmental impact statements--updated every six months or so--for energy policy, transportation policy, and other major policy decisions." (Douglas' footnote 8),

Under the Act, the appraisal by the Council on Environmental Quality of which Russell Train is the chairman is a weighty one, for under Section 204 of the Act it has the responsibility "to appraise the various programs and activities of the Federal Government" in light of the policy of the Act and "to develop and recommend . . . national policies to foster and promote the improvement of environmental quality". 83 Stat. 855; 42 U.S.C. 4344(3), (4). CEQ, in other words, is the expert ombudsman in the environmental area.

The apparent tendency among federal agencies, Congressman Dingell says, is to decide first what they want to do and then prepare an impact statement as an apologia for what they have done. That puts the cart before the horse. That is what the Commission did here. But that is to adopt "an excessively narrow construction" of its statutory power "to avoid compliance" with the new environmental standards--all as condemned in the Conference report, supra, at 10. That is to say, environmental considerations are, so far as possible, to shape all agency policies and decisions.

* * *

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[2] Congressman Dingell, another main sponsor of NEPA, recently was reported as saying: "The success of the environmental impact statements is not so much that they were used as we intended they should, but that citizens have been able to use the process as a (way) to get into courts . . . . Some agencies are complying poorly. They decide what they are going to do and then write an environmental impact statement to support the decision. That is not what Congress had in mind. I am fearful that we are breeding a race of impact statement writers who put all the right words down but don't really get environmental concerns involved in the decision-making process. The impact statement itself is not important. The important thing is that proper judgments are made reflecting environmental considerations in the decision-making process. The impact statement should be a discipline for this and also a process by which the public can be informed and brought into the decision-making process". (Douglas' footnote 10).

Freedom From Want

Editor's Note

In the legal sense there is no freedom from want. There is a freedom to make one's own way, and if one can't, there may be some collective effort to help. Often, this effort—known generally as welfare—comes with many strings attached. Sometimes, as pointed out in the paper by Joe Bell, the condition to welfare is the relinquishment of other freedoms. The privacy of one's own home, for example, may have to yield a little.

This rule was discovered by Barbara James, a recipient of Aid to Families With Dependent Children (AFDC). A welfare caseworker informed Mrs. James that she wished to make a home visit. Mrs. James declined and suggested that the desired information could be obtained by telephone. As a result, the welfare office found James ineligible for further benefits.

Wyman v. James
400 U.S. 309 (1971)

* * *

When a case involves a home and some type of official intrusion into that home, as this case appears to do, an immediate and natural reaction is one of concern about Fourth Amendment rights and the protection which that Amendment is intended to afford. Its emphasis indeed is upon one of the most precious aspects of personal security in the home. "The right of the people to be secure in their persons, houses, papers, and effects . . . "

* * *

This natural and quite proper protective attitude, however, is not a factor in this case, for the seemingly obvious and simple reason that we are not concerned here with any search by the New York social service agency in the Fourth Amendment meaning of that term. It is true that the governing statute and regulations appear to make mandatory the initial home visit and the subsequent periodic "contacts" (which may include home visits) for the inception and continuance of aid. It is also true that the caseworker's posture in the home visit is perhaps, in a sense, both rehabilitative and investigative. But this latter aspect, we think, is given too broad a character and far more emphasis than it deserves if it is equated with a search in the traditional criminal law context. We note, too, that the visitation in itself is not forced or compelled, and that the beneficiary's denial of permission is not a criminal act. If consent to the visitation is withheld, no visitation takes place. The aid then never begins or merely ceases, as the case may be. There is no entry of the home and there is no search.

If however, we were to assume that a caseworker's home visit, before or subsequent to the beneficiary's initial qualification for benefits, somehow (perhaps because the average beneficiary might feel she is in no position to refuse consent to the visit), and despite its interview nature, does possess some of the characteristics of a search in the traditional sense, we nevertheless conclude that the visit does not fall within the Fourth Amendment's proscription. This is because it does not descend to the level of unreasonableness.

It is unreasonableness which is the Fourth Amendment's standard. . . .

There are a number of factors which compel us to conclude that the home visit proposed for Mrs. James is not unreasonable:

1. The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the child and, further, it is on the child who is dependent. There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights.

2. The agency, with tax funds provided from federal as well as from state sources, is fulfilling a public trust. The State, working through its qualified welfare agency, has appropriate and paramount interest and concern in seeing and assuring that the intended and proper objects of that tax-produced assistance are the ones who benefit from the aid it dispenses. Surely it is not unreasonable, in the Fourth Amendment sense or in any other sense of that term, that the State have at its command a gentle means, of limited extent and of practical and considerate application, of achieving that assurance.

3. One who dispenses purely private charity naturally has an interest in and expects to know how his charitable funds are utilized and put to work. The public, when it is the provider, rightly expects the same. It might well expect more, because of the trust aspect of public funds, and the recipient, as well as the caseworker, has not only an interest but an obligation.

4. The emphasis of the New York statutes and regulations is upon the home, upon "close contact" with the beneficiary, upon restoring the aid recipient "to a condition of self-support", and upon the relief of his distress. The federal emphasis is no different. . . . It requires cooperation from the state agency upon specified standards and in specified ways. And it is concerned about any possible exploitation of the child.

5. The home visit, it is true, is not required by federal statute or regulation. But it has been noted that the visit is "the heart of welfare administration"; that it affords "a personal, rehabilitative orientation, unlike that of most federal

programs"; and that the "more pronounced service orientation" effected by Congress with the 1956 amendments to the Social Security Act "gave redoubled importance to the practice of home visiting. . . ." Rehabilitation, Investigation and the Welfare Home Visit, 79 Yale L.J. 746, 748 (1970). The home visit is an established routine in States other than New York.

6. The means employed by the New York agency are significant. Mrs. James received written notice several days in advance of the intended home visit. The date was specified. Section 134-a of the New York Social Welfare Law . . . sets the tone. Privacy is emphasized. The applicant-recipient is made the primary source of information as to eligibility. Outside informational sources, other than public records, are to be consulted only with the beneficiary's consent. Forcible entry or entry under false pretenses or visitation outside working hours or snooping in the home are forbidden. . . . All this minimizes any "burden" upon the homeowner's right against unreasonable intrusion.

7. Mrs. James, in fact, on this record presents no specific complaint of any unreasonable intrusion of her home and nothing which supports an inference that the desired home visit had as its purpose the obtaining of information as to criminal activity. She complains of no proposed visitation at an awkward or retirement hour. She suggests no forcible entry. She refers to no snooping. She describes no impolite or reprehensible conduct of any kind. She alleges only, in general and nonspecific terms, that on previous visits, and on information and belief, on visitation at the home of other aid recipients, "questions concerning personal relationships, beliefs and behavior are raised and pressed which are unnecessary for a determination of continuing eligibility." Paradoxically, this same complaint could be made of a conference held elsewhere than in the home, and yet this is what is sought by Mrs. James. . . . What Mrs. James appears to want from the agency which provides her and her infant son with the necessities of life is the right to receive those necessities upon her own informational terms, to utilize the Fourth Amendment as a wedge for imposing those terms, and to avoid questions of any kind.

8. We are not persuaded, as Mrs. James would have us be, that all information pertinent to the issue of eligibility can be obtained by the agency through an interview at a place other than the home, or, as the District Court majority suggested,

by examining a lease or a birth certificate, or by periodic medical examinations, or by interviews with school personnel. . . . Although these secondary sources might be helpful, they would not always assure verification of actual residence or of actual physical presence in the home, which are requisites for AFDC benefits, or of impending medical needs. And, of course, little children, such as Maurice James, are not yet registered in school.

9. The visit is not one by police or uniformed authority. It is made by a caseworker of some training whose primary objective is, or should be, the welfare, not the prosecution, of the aid recipient for whom the worker has profound responsibility. As has already been stressed, the program concerns dependent children and the needy families of those children. It does not deal with crime or with the actual or suspected perpetrators of crime. The caseworker is not a sleuth but rather, we trust, is a friend in need.

10. The home visit is not a criminal investigation, does not equate with a criminal investigation, and despite the announced fears of Mrs. James and those who would join her, is not in aid of any criminal proceeding. If the visitation serves to discourage misrepresentation or fraud, such a by-product of that visit does not impress upon the visit itself a dominant criminal investigative aspect. And if the visit should, by chance, lead to the discovery of fraud and a criminal prosecution should follow, then, even assuming that the evidence discovered upon the home visitation is admissible, an issue upon which we express no opinion, that is a routine and expected fact of life and a consequence no greater than that which necessarily ensues upon any other discovery by a citizen of criminal conduct.

11. The warrant procedure, which the plaintiffs appear to claim to be so precious to them, even if civil in nature, is not without its seriously objectionable features in the welfare context. If a warrant could be obtained (the appellees afford us little help as to how it would be obtained), it presumably could be applied for ex parte, its execution would require no notice, it would justify entry by force, and its hours for execution would not be so limited as those prescribed for home visitation. The warrant necessarily would imply conduct either criminal or out of compliance with an asserted governing standard. Of course, the force behind the warrant argument, welcome to the one asserting it, is the fact that it would have to rest

upon probable cause, and probable cause in the welfare context, as Mrs. James concedes, requires more than the mere need of the caseworker to see the child in the home and to have assurance that the child is there and is receiving the benefit of the aid which has been authorized for it. In this setting the warrant argument is out of place.

It seems to us that the situation is akin to that where an Internal Revenue Service agent, in making a routine civil audit of a taxpayer's income tax return, asks that the taxpayer produce for the agent's review some proof of a deduction the taxpayer has asserted to his benefit in the computation of his tax. If the taxpayer refuses, there is, absent fraud, only a disallowance of the claimed deduction and a consequent additional tax. The taxpayer is fully within his "rights" in refusing to produce the proof, but in maintaining and asserting those rights a tax detriment results and it is a detriment of the taxpayer's own making. So here Mrs. James has the "right" to refuse the home visit, but a consequence in the form of cessation of aid, similar to the taxpayer's resultant additional tax, flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved.

Camara v. Municipal Court . . ., and its companion case, See v. City of Seattle, . . . both by a divided Court, are not inconsistent with our result here. Those cases concerned, respectively, a refusal of entry to city housing inspectors checking for a violation of a building's occupancy permit, and a refusal of entry to a fire department representative interested in compliance with a city's fire code. In each case a majority of this Court held that the Fourth Amendment barred prosecution for refusal to permit the desired warrantless inspection . . . .

. . . [Camara and See] concerned a true search for violations. . . . The community welfare aspects, of course, were highly important, but each case arose in a criminal context where a genuine search was denied and prosecution followed.

In contrast, Mrs. James is not being prosecuted for her refusal to permit the home visit and is not about to be so prosecuted. Her wishes in that respect are fully honored. We have not been told, and have not found, that her refusal is made a criminal act by any applicable New York or federal statute. The only consequence of her refusal is that the payment of benefits ceases. . . .

Mr. Justice Douglas, dissenting

We are living in a society where one of the most important forms of property is government largesse which some call the "new property". The payrolls of government are but one aspect of that "new property". Defense contracts, highway contracts, and the other multifarious forms of contracts are another part. So are subsidies to air, rail, and other carriers. So are disbursements by government for scientific research. So are TV and radio licenses to use the air space which of course is part of the public domain. Our concern here is not with those subsidies but with grants that directly or indirectly implicate the *home life* of the recipients.

In 1969 roughly 127 billion dollars were spent by the federal, state and local governments on "social welfare". To farmers alone, almost four billion were paid, in part for not growing certain crops. . . .

Yet almost every beneficiary whether rich or poor, rural or urban, has a "house"--one of the places protected by the Fourth Amendment against "unreasonable searches and seizures". The question in this case is whether receipt of largesse from the government makes the *home* of the beneficiary subject to access by an inspector of the agency of oversight, even though the beneficiary objects to the intrusion and even though the Fourth Amendment's procedure for access to one's *house* or *home* is not followed. The penalty here is not, of course, invasion of the privacy of Barbara James, only her loss of federal or state largesse. That, however, is merely rephrasing the problem. Whatever the semantics, the central question is whether the government by force of its largesse has the power to "buy up" rights guaranteed by the Constitution. But for the assertion of her constitutional right, Barbara James in this case would have received the welfare benefit.

* * *

Is a search of her home without a warrant made "reasonable" merely because she is dependent on government largesse?

Judge Skelly Wright has stated the problem succinctly:

"Welfare has long been considered the equivalent of charity and its recipients have been subjected to all kinds of dehumanizing experiences in the government's effort to police its welfare payments. In fact, over half a billion dollars are expended annually for administration and policing in connection with the Aid to Families with Dependent Children program. Why such large sums are necessary for administration and policing has never been adequately explained. No such sums are spent policing the government subsidies grnated to farmers, airlines, steamship companies, and junk mail dealers, to name but a few. The truth is that in this subsidy area society has simply adopted a double standard, one for aid to business and the farmer and a different one for welfare." Poverty, Minorities, and Respect for Law, 1970 Duke L.J. 425, 437-438.

If the welfare recipient was not Barbara James but a prominent affluent cotton or wheat farmer receiving benefits for not growing crops, would not the approach be different? Welfare in aid of dependent children, like social security and unemployment benefits, has an aura of suspicion. There doubtless are frauds in every sector of public welfare whether the recipient be a Barbara James or someone who is prominent or influential. But constitutional rights--here the privacy of the home--are obviously not dependent on the poverty or the affluence of the beneficiary. It is the precincts of the home that the Fourth Amendment protects; and their privacy is as important to the lowly as to the mighty. . . .

It may be that in some tenements one baby will do service to several women and call each one "mom". It may be that other frauds, less obvious, will be perpetrated. But if inspectors want to enter the precincts of the home against the wishes of the lady of the house, they must get a warrant. The need for exigent action as in cases of "hot pursuit" is not present, for the lady will not disappear; nor will the baby.

I would place the same restrictions on inspectors entering the homes of welfare beneficiaries as are on inspectors entering the homes of those on the payroll of the government, or the homes of those who contract with the government, or the homes of those who work for those having government contracts. The values of the home protected by the Fourth Amendment are not peculiar to capitalism as we have known it; they are equally relevant to the new form of socialism which we are entering. Moreover, as the numbers of functionaries and inspectors multiply, the need for protection of the individual becomes indeed more essential if the values of a free society are to remain. . . .

The bureaucracy of modern government is not only slow, lumbering, and oppressive; it is omnipresent. It touches everyone's life at numerous points. It pries more and more into private affairs, breaking down the barriers that individuals erect to give them some insulation from the intrigues and harassments of modern life. Isolation is not a constitutional guarantee; but the sanctity of the sanctuary of the home is such--as marked and defined by the Fourth Amendment. . . .

Mr. Justice Marshall, whom Mr. Justice Brennan
joins, dissenting

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. . . Even if the Fourth Amendment does not apply to each and every governmental entry into the home, the welfare visit is not some sort of purely benevolent inspection. No one questions the motives of the dedicated welfare caseworker. Of course, caseworkers seek to be friends, but the point is that they are also required to be sleuths. The majority concedes that the "visitation" is partially investigative, but claims that this investigative aspect has been given "too much emphasis". Emphasis has indeed been given. Time and again, in briefs and at oral argument, appellants emphasized the need to enter AFDC homes to guard against welfare fraud and child abuse, both of which are felonies. The New York statutes provide emphasis by requiring all caseworkers to report any evidence of fraud which a home visit uncovers, N.Y. Social Welfare Law section 145, McKinney 1966. And appellants have strenuously emphasized the importance of the visit to provide evidence leading to civil forfeitures including elimination of benefits and loss of child custody. . . .

The Court attempts to distinguish See and Camara by telling us that those cases involved "true" and "genuine" searches. The only concrete distinction offered is that See and Camara concerned criminal prosecutions for refusal to permit the search. The Camara opinion did observe that one could be prosecuted for a refusal to allow that search; but, apart from the issue of consent, there is neither logic in, nor precedent for, the view that the ambit of Fourth Amendment depends not on the character of the governmental intrusion but on the size of the club that the State wields against a resisting citizen. Even if the magnitude of the penalty were relevant, which sanction for resisting the search is more severe? For protecting the privacy of her home, Mrs. James lost the sole means of support for herself and her infant son. For protecting the privacy of his commercial warehouse, Mr. See received a $100 suspended fine.

Conceding for the sake of argument that someone might view the "visitation" as a search, the majority nonetheless concludes that such a search is not unreasonable. However, their mode of reaching that conclusion departs from the entire history of Fourth Amendment case law. Of course, the Fourth Amendment test is reasonableness, but in determining whether a search is reasonable, this Court is not free merely to balance, in a totally ad hoc fashion, any number of subjective factors. An unbroken line of cases holds that, subject to a few narrowly drawn exceptions, any search without a warrant is constitutionally unreasonable. . . In this case, no suggestion that evidence will disappear, that a criminal will escape, or that an officer will be injured, justifies the failure to obtain a warrant. Instead, the majority asserts what amounts to three state interests which allegedly render this search reasonable. None of these interests is sufficient to carve out a new exception to the warrant requirement.

First, it is argued that the home visit is justified to protect dependent children from "abuse" and "exploitation". These are heinous crimes, but they are not confined to indigent households. Would the majority sanction, in the absence of probable cause, compulsory visits to all American homes for the purpose of discovering child abuse? Or is this Court prepared to hold as a matter of constitutional law that a mother, merely because she is poor, is substantially more likely to injure or exploit her children? Such a categorical approach to an entire class of citizens would be dangerously at odds with the tenets of our democracy.

Second, the Court contends that caseworkers must enter the homes of AFDC beneficiaries to determine eligibility. Interestingly, federal regulations do not require the home visit. . . . The majority's implication that a biannual home visit somehow assures the verification of actual residence or actual physical presence in the home strains credulity in the context of urban poverty. Despite the caseworker's responsibility for dependent children, he is not even required to see the children as part of the home visit. Appellants offer scant explanation for their refusal even to attempt to utilize public records, expenditure receipts, documents such as leases, non-home interviews, personal financial records, sworn declarations, etc.--all sources which governmental agencies regularly accept as adequate to establish eligibility for other public benefits. In this setting, it ill behooves appellants to refuse to utilize informational sources less drastic than an invasion of the privacy of the home.

We are told that the plight of Mrs. James is no different from that of a taxpayer who is required to document his right to a tax deduction, but this analogy is seriously flawed. The record shows that Mrs. James has offered to be interviewed anywhere other than her home, to answer any questions and to provide any documentation which the welfare agency desires. The agency curtly refused all these offers and insisted on its "right" to pry into appellee's home. Tax exemptions are also governmental "bounty." A true analogy would be an Internal Revenue Service requirement that in order to claim a dependency exemption, a taxpayer must allow a specially trained IRS agent to invade the home for the purpose of questioning the occupants and looking for evidence that the exemption is being properly utilized for the benefit of the dependent. If such a system were even proposed, the cries of constitutional outrage would be unanimous.

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Although the Court does not agree with my conclusion that the home visit is an unreasonable search, its opinion suggests that even if the visit were unreasonable, appellee has somehow waived her right to object. Surely the majority cannot believe that valid Fourth Amendment consent can be given under the threat of the loss of one's sole means of support. Nor has Mrs. James waived her rights. Had the Court squarely faced the question of whether the State can condition welfare payments on the waiver of clear constitutional rights, the answer would be plain. . . .

In deciding that the homes of AFDC recipients are not entitled to protection from warrantless searches by welfare caseworkers, the Court declines to follow prior case law and employs a rationale that, if applied to the claims of all citizens, would threaten the vitality of the Fourth Amendment. This Court has occasionally pushed beyond established constitutional contours to protect the vulnerable and to further basic human values. I find no little irony in the fact that the burden of today's departure from principled adjudication is placed upon the lowly poor. Perhaps the majority has explained why a commercial warehouse deserves more protection than does this poor woman's home. I am not convinced; and, therefore, I must respectfully dissent.